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No. 80-1582

# In the Supreme Court of the United States

OCTOBER TERM, 1980

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UNITED STATES OF AMERICA,

*Petitioner*

v.

JEFFREY R. MACDONALD

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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## JOINT APPENDIX

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PETITION FOR CERTIORARI FILED MARCH 18, 1981
CERTIORARI GRANTED MAY 26, 1981

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UNITED STATES DISTRICT COURT

Criminal Docket 75-26-Cr-3

UNITED STATES OF AMERICA

*v.*

JEFFREY R. MACDONALD

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## RELEVANT DOCKET ENTRIES

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| DATE | PROCEEDINGS |
|---|---|
| 1/24/75 | Indictment filed. |
| 1/24/75 | Warrant for arrest issued. |
| 4/8/75 | Notice of motion to dismiss the indictment for denial of right to speedy prosecution and trial filed. |
| 5/2/75 | Defendant's memorandum of law in support of motion to dismiss indictment for denial of right to speedy prosecution and trial filed. |
| 5/5/75 | Hearing on motions conducted. |
| 5/23/75 | Defendant arraigned and entered plea of not guilty. |
| 7/29/75 | Motion to dismiss indictment for denial of right to speedy prosecution and trial denied. |
| 7/29/75 | Case set for trial on 8/18/75. |
| 8/8/75 | Notice of appeal from order denying defense motions filed. |
| 8/11/75 | Record on appeal mailed to Fourth Circuit. |
| 8/18/75 | Certified copy of court of appeals' stay order and order allowing appeal filed. |

| DATE | PROCEEDINGS |
|---|---|

1/26/76 Opinion of Fourth Circuit ordering dismissal of the indictment with prejudice for Sixth Amendment speedy trial violations filed.

6/23/76 Copy of order of Fourth Circuit ordering that the mandate be stayed pending application of the appellee in Supreme Court for a writ of certiorari filed.

6/28/77 Record on appeal forwarded to Fourth Circuit upon request because petition for writ of certiorari granted.

6/12/78 Mandate from Fourth Circuit court of appeals ordering that cause be remanded to district court for further proceedings in conformity with the opinion of the Supreme Court.

6/20/78 Order from Fourth Circuit staying order remanding case to the district court pending submission of supplemental briefs on denial of motion to dismiss due to double jeopardy.

10/31/78 Published opinion from Fourth Circuit Court of Appeals affirming order denying McDonald's plea of double jeopardy and remanding to district court for further proceedings.

3/28/79 Order issued setting trial for 4/23/79.

4/18/79 Motion to continue trial from 4/23/79 to some subsequent date filed.

5/8/79 Stipulation and agreement to continuance of case signed by both parties.

6/28/79 Notice to appear issued—case set for jury trial on 7/16/79.

7/13/79 Motion to dismiss indictment because of denial of defendant's right to speedy trial filed.

8/29/79 Jury verdict—Count 1—guilty to second degree murder; count 2—guilty to second degree murder;—Count 3—guilty to first degree murder.

| DATE | PROCEEDINGS |
|---|---|

8/29/79 Judgment and probation/commitment order—Count 1—period of defendant's natural life; Count 2 period of defendant's natural life, the sentence to run consecutively with the sentence imposed on count 1; Count 3—period at defendant's natural life, the sentence to run consecutively with the sentence imposed on Count 2.

9/4/79 Motion to vacate judgment of conviction and dismiss indictment [for denial of right to speedy trial] filed.

9/7/79 Notice of appeal filed.

9/14/79 Motion for bail denied.

9/14/79 Motion to vacate judgment of conviction and dismiss the indictment denied for reasons stated in the court's order denying bail.

10/19/79 Record on appeal mailed to Fourth Circuit.

# UNITED STATES COURT OF APPEALS
# FOR THE FOURTH CIRCUIT

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Docket No. 795253

UNITED STATES OF AMERICA, APPELLEE

*v.*

JEFFREY R. MACDONALD, APPELLANT

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## SUMMARY OF EVENTS

ARGUMENT: 2/5/80

OPINION: 7/29/80

JUDGMENT: 7/29/80

DISPOSITION: Reversed and Remanded/Rehearing Denied

PETITION FOR REHEARING: 8/18/80

MANDATE ISSUED: 12/26/80

| DATE | FILINGS-PROCEEDINGS |
|---|---|
| 9/11/79 | Case docketed |
| 11/16/79 | Order denying bail pending appeal filed. |
| 11/16/79 | Appellant's brief due 11/27/79; appellee's 21 days afterwards. |
| 8/18/80 | Petition for rehearing with suggestion for rehearing en banc filed. |
| 12/18/80 | Per curiam opinion denying rehearing and rehearing en banc filed. |

## ARTICLE 32

## TESTIMONY OF WILLIAM E. POSEY

* * * * *

[1298] Q: Did you have any occasion to become awake or to awake on February 17?

A: Well, about—sometime between a quarter to four and four-thirty, I didn't look at the time, exactly what time it was, but I started to go to the restroom. I heard a car next door whip in, you know, real fast. There was this—

MR SEGAL: You'll have to try and talk just a little slower for purpose of both clarity, understanding what you are saying, and to enable the recorder to pick it up. You tend to talk a little rapidly. You say you went to the rest room?

A: I was fixing to get up to go the restrooms, and all of a sudden I heard a car whip in. There was a lot of laughing and carrying on, so I walked around to my front door to see what was going on.

Q: And may I ask you, where did you hear the sound of the car from—was it from the street?

A: From my bedroom I heard it, you know, pull into the drive way real fast.

Q: That drive way was located between what properties?

A: Right between my house and the girls that lived in the apartment right across the fence.

Q: Are you referring to some girls that live in the adjoining building?

A: No, no, it's—you can look out—their house is separate from mine. It was directly across from our front door.

Q: And you say some girls. Did you know the occupants of the apartment?

A: Well, I knew them by, you know, just saying hello, and talking to them occasionally, but I mean I wasn't associated, real good friends, or anything.

Q: Now what happened when you heard this sound of the car pulling into the drive way and the voices? By the way, can you describe what the voices were saying or how they sounded?

[1299] A: No, they were just, you know, laughing, you know. I didn't pay any attention to what they were saying. I don't believe they were saying too much, really. Just laughing, cutting up, giggling a lot. This type of thing.

Q: Giggling a lot?

A: Yes.

Q: Could you indicate this to approximately how many voices there appeared to be?

A: Well, there was more than two, and there was more than two people in the car. It was—it was a crowd.

Q: Now as a result of hearing that particular noise or those sounds, what did you do?

A: Well, I walked around to my front door to see what was going on, and I noticed that the lights and everything were on in the apartment—in their apartment and I looked over there and two of the girls were in there painting, and then I saw—I looked up and I saw the car that was pulled in. It was a Mustang, and the one girl got out, and the girl I know—

Q: Excuse me. You said two girls were in the apartment painting?

A: Painting, yes.

Q: Are you indicating there were more than two occupants in that apartment?

A: There was three.

Q: And was the third occupant also female?

A: They were all three female.

Q: All right, now where was this third female?

A: She was getting out of the car and walking into the house, and then the car pulled out and took off.

Q: Now, what, if anything, did you observe about her at that time? Her appearance or dress.

A: Well, the only thing that I noticed about her, at least, I noticed it was her. and she had something in

her hand, but I—I did not take note of what it was, but she walked kind of fast into her house. She didn't walk real fast, but faster than she usually walks.

[1300] Q: Now what did that young lady look like at that time?

A: She just looked like, you know, she didn't look any certain way. I didn't—I just noticed it was her, because she didn't have a hat or anything like that on at that time. She had her—she has brunette hair, and I guess it was down close to her shoulders.

Q: Now what, if anything, caused this episode to remain in your memory, that caused you to pay any note to it?

A: Well, I had to get up, you know, pretty early and go to work, and Gene, the man I worked with, we were headed to Southern Pines, going through Fort Bragg, and he told me that there had been a murder out there that night, you know, several people had been killed, and so, when he told me this, you know, and he said it was by a band of hippies, you know, and I knew—it went through my mind then, you know, that she was out. It was unusual for her to be out that, roaming around that time of the night, and it just stayed in the back of my mind. I just let it go there.

Q: All right now, would you describe for the investigating officer, the clothes or other paraphanalia that your neighbor wore, her normal habit, her normal wear?

A: Well, like before—

CPT SOMERS: I object to that, as calling for a conclusion. We have no basis for his being able to draw.

MR SEGAL: Well, if he wants to establish how long he's observed the person, I'll be glad to do that, although the government knows itself, but I'll be able to do so.

CPT BEALE: Establish it.

Q: Let me back up, if I may, Mr. Posey. How long had you seen this gal around or known her, the one that you are describing on this morning, that you saw getting out of the Mustang?

A: I'd seen her, you know, everyday, when I would come home from work, and a lot at night, and probably,

I think, they had lived there for two or three months prior to that, and I think I'd seen her once or twice in Haymount, you know, before they ever even moved there. [1301] Q: And how frequently did you see her on a given day? One occasion or more than one occasion?

A: I'd say maybe twice a day.

Q: Now can you tell us something about what the Haymount section of—is or what kind of community it is?

A: It's where most of the hippies hang out at.

Q: And on the various occasions that you had seen this young lady before the morning of the 17th of February, would you describe, you know, what her normal wearing apparel was?

A: Well, she had this purple outfit, you know, with the vest type thing that she wore all the time. It was kind of silky, and she had a big old white floppy hat that she wore, and she had a pair of white boots that she wore a lot, and she used to—I mean the hat was part of her because you very seldom, you know, when she went out she always had the hat with her. I mean very seldom did you see her without the hat, and on once or twice she had worn a blond wig, you know, she had a blond wig too, and she had worn it once or twice, but she didn't wear it too often, not real regular.

CPT SOMERS: I object to the testimony about the blond wig since that's obviously not normal wearing apparel.

MR SEGAL: I agree it is not normal wearing apparel. That's exactly why it is relevant testimony. We will establish certain subsequent events relating to that—the clothing and the hair.

CPT BEALE: The objection is overruled, Captain Somers.

Q: Now you said something about the fact that you had seen this floppy hat which she wore on more thar one occasion?

A: Yes, sir.

Q: How often would you say that she wore or had that hat with her?

A: Just about every time that she went out the door she had it.

Q: And could you describe anything about that hat, other than the fact that you recall a floppy hat?

A: Well, it was big, you know, it was kind of wide, you know, floppy, the type that flopped around—around the ears, and the thing went around the front.

[1302] Q: You mean the brim, you are referring to?

A: Yeah, but you know, it hung down around the front.

Q: Do you know what color it was?

A: It was white.

Q: Was she in the habit of also wearing the boots that you described?

A: She didn't wear the boots that often. She usually went barefooted most of the time.

Q: Did you ever see her in any other shoes, other than the boots?

A: I seen her—Well, I've seen her, you know, in sandles and stuff like this.

Q: Now do you know whether any particular type of weather conditions or the time of the year when she would wear the boots?

A: Well, usually she'd wear the boots a lot of the times when it was wet, or when she was going, you know, like to a party or something like this. When she wore a dress she would wear the boots.

Q: Now what was the weather condition on that morning? Do you recall?

A: It was fairly, you know, it was fairly cold.

Q: And was there anything else that you observed about the weather at that time?

A: Not that morning.

Q: Now did you have any occasion to mention the episode at the time it happened to any other person,

your observance of the girl coming into the drive way at that time of the morning?

A: Well, you know, they've done a lot of crazy things over there, but that was about the craziest thing I'd seen them, painting away at that time in the morning, so, I, you know, I got my wife up and I—I brought her over to the front door to show her what was going on, and the only thing she—she saw was when the car was backing up, I woke her up, she saw the car backing out, and I showed her them over there painting the apartment at that time in the morning.

Q: Had you ever seen that particular car there on any other occasion?

A: Well, it—I'd seen the Mustang there a lot of times, it was a blue one, but I can't remember if that was the color of that car that [1303] morning, but I know it was a Mustang because I remember the shape of the car and everything, but I didn't take note of what color it was.

Q: Did you observe the persons who were in the Mustang that morning?

A: No, sir.

Q: Do you know whether there was one or more persons in it when it drove off?

A: There was at least two in it when it drove off because they, you know, laughing and stuff.

Q: Did they appear to you, from what you saw and what you heard, from the voices, that they were males or females?

A: By their voices, by the way they were giggling, they were males.

Q: Do you know what connection, if any, that young woman you've described with a floppy hat, has ever had with Fort Bragg, North Carolina.

A: Her father was Colonel in the Army, and—

Q: Is he still a member of the Army?

A: No, he's retired.

Q: And did you ever meet her father?

A: I met him on one occasion. Shortly after that she left and he come looking for her. He was looking for her.

Q: How old a young woman is she?

A: I think she's somewhere in the neighborhood of around 18, because she looks older than her actual age.

Q: Now on the subsequent days, after February 17th, when Mrs MacDonald—when the MacDonald killing was out, did you observe or see anything about this young lady in regard, first of all, to her clothing?

A: Well, I noticed that she quit wearing her hat. I didn't see her hat after that, and she never wore her hat any more after that at all.

Q: And prior to February 17th, did you ever recall having seen her without that particular hat that she wore?

A: Oh, I'd seen her, you know, a lot of times, without it, but most of the times she had it.

[1304] Q: And did you ever have occasion to discuss that fact that you didn't see her with it after February 17th?

CPT SOMERS: I object.

CPT BEALE: What is your basis?

CPT SOMERS: Hearsay.

MR SEGAL: It is not offered for the truth or falsity of what she said but the observation and what was said that he acted on thereafter.

CPT BEALE: Overruled.

Q: Now did you have any conversations with this young woman?

A: Well, about a week or two after, a friend of hers who was a friend of mine, Paul Bowman, he was getting out of the Army, and I owed him some money for a telephone bill, and so he was, you know, over there with them, and so he was by the fence and I saw him. My wife and I were in the house and I went out to talk to him and my wife was standing on the porch. I started talking to him, and then we got on the subject about—

she said that the police had questioned her several times about it, and so he said that she needed an alibi, and then she had walked up, you know, in the meantime, with the three of us standing there, and they were both on the other side of the fence, and so I said "Well, I could be your alibi, because I saw your girl friends painting in their apartment, and I saw you when you got out of the car that morning."

Q: Did she, herself, ever say anything about an alibi on the morning of February 17th?

A: Well, you know, you know, she—she said that she had been questioned several times, that she was stoned out that night and that she didn't remember what she had done.

Q: Let's break that down, first of all. Did she, in fact, indicate that she had been questioned by police and other law enforcement authorities about her whereabouts on the morning of 17 February?

A: Yes, sir.

Q: What did she indicate as to her ability to establish where she was on that morning?

[1305] A: She said that she didn't know where she was that morning.

Q: Did she ever use the word alibi, or the word abili come up in her presence?

A: Paul, you know, brought up the word alibi. He said that she needed an alibi. He said that she needed an alibi.

Q: And what, if anything, did you say or do in response to his statement, that he thought she needed an alibi?

A: Well, I made the remark, I said "Well, I can be her alibi because I saw her that morning. I saw her two girl friends painting the apartment, then I saw her when she come up and joined them, you know." And then when I said that, she kind of backed off, and they had to go, they left, they left, they just dropped the subject then.

Q: What was your relationship with this young lady after the morning, after the day that you told her that you had seen her on the morning of 17 February?

A: Well, I mean, she kind of shied away from me then, and then she left shortly after that.

Q: How long after that particular conversation did she leave?

A: It was within a few days.

Q: You say she left. She moved away from there?

A: She left completely.

Q: Did you ever have any discussions with her about the hat and the wig that you'd seen her with?

A: Yeah, I, on occasion, you know—

Q: Which occasion are you referring to?

A: The one where about the alibi, you know, and she said, she made a remark—what made it look bad was that she didn't—she threw her hat and her boots away, and I asked her, I said "What did you do with them?" She said she threw them away but she didn't remember what she'd done with them. But her wig, she said she still had it, that blond wig.

Q: Did you question her further about the location of the—or the method by which she disposed of her hats and her boots?

[1306] A: I asked her, you know, what she did with them, and she just kept saying she didn't remember what she'd done with them.

Q: Had you ever seen her with her boots and her hat after that morning, February 17th?

A: No.

Q: Did she describe anything about the condition of her boots at the time she disposed of them?

A: Well, I had talked to her, you know, about two nights ago. She had just got back in town, and I went up to Haymount to try to find her name, to try to find out what her name was, and I was talking to her, and she had mentioned that when she got rid of her boots, I said "Why did you get rid of your boots?" you know, and she said "Well, the heel was broken, I broke the heel" and she said they were awful muddy at that time.

Q: Now what was it that got you so interested or caused you to pay attention to the fact that the people next door were painting their apartment at 4 a.m. in the morning on the 17th? What was there that struck you about the episode—you woke up and you saw these girls painting the apartment?

A: You know, I mean, they didn't usually keep hours like that, way down in the morning, I mean they, it wasn't part of her to be out running around that time of the morning.

Q: Did she discuss with you—did the young lady discuss with you her condition, her physical or mental condition, on the morning of 17th of February when you talked to her?

A: Well, she said—she had said that she was stoned, and I asked her what she was using that night, if she was on acid or what, and she said mescaline. I said didn't she remember what she did, and she said that she had been stoned a hundred times on acid and all of it, you know, but she said that was the only night that she couldn't remember anything that had happened during the course of the night after she got stoned, and she said that since that time that she hadn't tried any of it, and had been off of it.

[1307] Q: When you say she had not tried any of it, do you mean she was referring to the fact that she had tried—

A: Dropped acid, shot mescaline or anything.

Q: But when you say stoned, perhaps it would be helpful to me if you gave a kind of description of what you understood that term to mean.

A: Well, when you are stoned, you know, you—you are out of the world. You are on your own.

Q: And that effect of being stoned, how is it achieved? How does one become stoned?

A: Either drop acid or shoot speed or something.

Q: What do you mean, drop acid?

A: Take acid.

Q: And acid is what? LSD?

A: LSD.

Q: Now what about mescaline? Do you know what mescaline is?

A: I'm not familiar with it. I've heard it when I was at college and I know a few people that used it, but I didn't know what it was.

Q: Did she indicate at what time she had taken the mescaline on or about 17 February?

A: No.

Q: Did she indicate at all that she had known where she had been prior to the time she came home in the Mustang that morning?

A: She said that the only thing that she could remember, she told me, was that she, you know, they were riding around. That's all she could remember, riding around, and she couldn't remember anything else.

Q: Did she remember or ever mention to you who the other persons that she was with when she was driving around in this Mustang?

A: No.

Q: Now did she do anything else in regard to what she wore after February 17th, that you observed?

A: Well, after then, you know, like she had worn this purple outfit quite a bit. Her choice, I guess, were limited, because she didn't have that many, but after that she started wearing black all the time. [1308] Like now, when you see her, she has nothing but black on, which is part of her dress.

Q: Are you aware of the day on which Mrs Colette MacDonald and the MacDonald children were buried?

A: Well, you know, I wasn't—know the exact date, but then I sat in my house, and the paper said they were having the funeral services out here at Fort Bragg, but during the day I noticed that the girl, that girl, she had wore black and had a black—

CPT SOMERS: Excuse me. I object to that. It's not responsive.

CPT BEALE: Overruled, answer the question.

A: She wore a black dress that day with black shoes and she wore a thing over her face, a vail, a black vail over her face, and had one of those things you use on a grave, a big old artificial flower thing, wreath, they had a wreath outside her door, and she sat there and—it was unusual for her too, because most of the time she, she was the type that was always going, wanting to go somewhere, go go. But that day she wouldn't go with anybody. She stayed in the apartment by herself all day. She just sat in there all day long.

Q: And that is the day in which you became aware that a funeral service was being held here at Fort Bragg?

A: Yes.

Q: Had you ever seen her in that kind of get up at all before?

A: That was quite contrary to the way she usually dressed. She never dressed like that before.

Q: And after the day that the MacDonald funeral, did she wear black clothing thereafter?

A: Well, after that day she left, you know, about a day or so later, and I've only seen her twice since then. On both occasions that I have seen her, she had black on. She wore nothing but black.

* * * *

[1312] Q: Did you ever have occasion to be in the presence of this young lady when there were police or other law enforcement officers nearby?

A: No, I just—I saw her get busted one day, but that's all.

Q: Did you ever hear her comment about police and what terms did she use to refer to law enforcement people?

A: She calls them pigs.

Q: Have you heard her say that recently?

A: Well, like night before last, a policeman passed by in a car and she said "Check the pig wagon out," and she pointed to the cop.

Q: Mr Posey, I want to show you an exhibit that's been previously marked in this case, A-31, and ask you whether this resembles any person that you know?

A: It resembles her in the way of the hat and the eyes, and this, you know, that's the type of the long straight blond wig, but her nose is big, like that, but it dosen't look like her chin.

Q: You disagree with the way the chin appears in this photo, rather this drawing, as you remember this girl?

A: Yeah, no, I mean—

Q: You disagree?

A: I do disagree with the chin, yes.

Q: May I have this drawing, sir, marked as Accused Exhibit 36, I believe.

MR SEGAL: I would state at this time that the exhibit that we've just had marked as A-36, was prepared in the same manner and fashion as the Exhibit A-31, by a former police artist pursuant to interviews and working with Captain MacDonald, and this drawing was prepared in the same fashion, except this is a photograph of the original. We are using a photograph at this time.

COL ROCK: On what date were these prepared, approximately?

[1313] MR SEGAL: August 8th and 9th of 1970.

COL ROCK: That will be entered as Accused Exhibit 36, drawing of man with mustache.

(A-36 was examined by counsel for the government.)

Questions by MR SEGAL:

Q: Mr Posey, I want to show you a copy of a drawing marked A-36 in this case, and ask you whether the face that appears in that drawing resembles any person you know?

A: It resembles the guy, you know, that used to drive the blue Mustang over there all the time. It doesn't look —the only thing, the mustache and the way his hair is. He always wore fly away collars, the kind that don't button down, they are always flopping around.

Q: Like the collar is depicted here?

A: He was a, you know, a well built man. He wasn't fat or something. He was well built. He's maybe six foot tall.

Q: You say he's the man who always drove the Mustang?

A: Yes.

Q: Is that the type of car that resembles the car you found on the morning of 17 February, out of which the young lady got out?

A: It was the same type of car. It was one of those Mach I's.

MR SEGAL: Cross examine.

Questions by CPT SOMERS:

Q: How far away from the apartment that you were living in was the apartment of these girls?

A: Between, about fifteen and twenty feet.

Q: And what were the two girls doing, did you say, in the house on the morning of the 17th?

A: They were painting.

COL ROCK: Excuse me. What were they painting? Were they painting walls or were they painting pictures?

WIT: They were painting walls, but they weren't what you call wall paint—they were painting designs and stuff like this.

• • • •

[1316] Q: You saw this girl come in on the morning of the 17th. Did you see her when she went out?

A: No.

Q: Then you don't know what she was wearing when she went out?

A: No, sir.

Q: Now you say this girl told you she had thrown her hat and boots away. Is that correct?

A: Yes, sir.

Q: When did she throw her hat and boots away?

A: Well, about a week or two after that when I was —when Paul and I and her were talking, you know, she said that she had thrown them away, and it was prior

to that, maybe inbetween that time and the murder, and up to that date, but she didn't say specifically at what time she had thrown them away.

Q: In other words, she had thrown them away between the 17th and the time you spoke to her?

A: Right. But she said that she was questioned, either a day or two days later she was questioned and she said that, you know, she didn't have her boots and her hat at that time either.

Q: You cannot describe the people that were in that Mustang. Is that correct?

A: No, sir.

Q: But you believe there were more than two in the car, two or more in the car when it left on the morning of the 17th?

A: Yes, sir, there was at least two in there because there was more than two voices coming from the car, at least two voices coming from the car.

Q: Now describe the discussion again concerning an alibi. Who first mentioned that word?

A: Paul Bowman, a friend of hers.

Q: And what did he say?

A: He said that, you know, she had been questioned three or four times and that she didn't know where she had been that night, that she was [1317] stoned and she needed an alibi, you know, and then I made a remark that I had seen her girl friends painting the apartment and I saw her get out of the car, get out of the car that morning, and I told him that I could be her alibi, so far as—

Q: And what did she say?

A: She didn't say nothing. She just kind of, you know, backed off and both of them dropped the conversation.

Q: When was the discussion about the boots and the hat?

A: That was earlier, earlier than the conversation, you know, when she said—when she had come up and

told me that she had been questioned, you know, several times.

Q: Now you say she shied away. I believe that's one of the terms you used at the time you mentioned that?

A: Yes.

Q: Well, describe shied away.

A: Well, I mean like we were really having, doing a lot of discussion, and all of a sudden she just, they both just withdrew from me. They had to go—they had to leave.

Q: They both withdrew?

A: Well, she did first and then Paul dropped the conversation and he got on another topic and they both left.

Q: Was Paul in that Mustang or in that area the night that she came in?

A: I didn't see him.

Q: You say that she told you that she was driving around that night, and that's all she remembered. Is that correct?

A: That's all she said she could remember.

Q: Now as I understand it, you've seen her twice since the day of the 17th to talk to her, is that correct?

A: No, I said I've seen her—she stayed around there after that for awhile, but then she left and I've only seen her twice since she left.

Q: I see. And she was wearing black on both of those occasions?

A: On both occasions.

[1318] Q: What kind of black clothing are we talking about?

A: Well, like she used to wear all purple silky outfits with a vest and a white blouse, and those silky looking baggy pants, but now she wears the same type of clothing, but it's solid black, it's all black. I mean like the other night when I saw her, she had the same style of pants and vest, but the purple part was black.

Q: Did this girl ever say to you that she had been in the MacDonald apartment?

A: No, sir.

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[1327] Q: Did you observe any differences or changes in the attitude or behavior of this young woman before—from the time before February 17th, and the time after February 17th 1970?

A: Well, like before, she, she was always, you know, real gay and real happy, and like I'd come home from work and she'd say "Hi" you know, real loud and asked me how my day went and this type of thing, but like night before last when I saw her she looked all run down and she, she keeps to herself more. She's not with the group, like night before last all the group was down at Rowan Park and she was up there by herself.

Q: Did you observe that change in behavior after February 17th?

A: Well, I mean, you know, after that there wasn't no all night parties or anything going on over next door there. Everything was real quiet.

Q: Did she continue to go or associate with this same young man who had been her boy friend before February 17th, as she did after—

A: Not like she did before, you know, they were always together before but after that—in fact, I didn't even see him until, you know, just here recently. He didn't come over no more after that. The day that Mrs MacDonald was buried, he was over there.

Q: Did you ever hear her talk about killing other human beings?

A: Well, you know, like the night before last, I asked her, and we got to talking about the MacDonald thing and everything and I asked her, she told me she was stoned out, she didn't remember what she done, and I said, "Well, did you do it? Were you a part of it" and she says she doesn't know, she just drew a blank, but she said that she didn't think she could kill anyone because she wasn't that type of [1328] person that, you know, was hostile, and I said "Well, you could have just

been holding the light", you know, and she kinda, you know, just nodded her head and let it go at that. But she made a remark, I asked her, I said, how was her and her boy friend doing, and she said they weren't getting along too well, and I asked her why, and she said "Well, we can't get married until we go out and kill some more people." She made that remark.

Q: Now I want to back up for just a second in regard to what you just told told us. Are you telling the investigating officer that two nights ago you asked this young lady directly whether or not she was involved in the killing in the MacDonald home?

A: Yes, sir.

Q: Now will you, better go over this quite slowing down—put the question, state the questions you posed to her, and tell us what she said, as much of her words as possible?

A: Well, you know, had been talking about it and I said, I asked her, had they questioned her any more about it, and she said no that she had been gone, she'd just got back in town, you know, and she told me that she was dying from hepatitis, kidney disease or something, and she said that she was supposed to die within a year, and so I asked her had they questioned her any more and she said no, and then I said, you know, I asked her if she was involved in it and she said she was stoned out on mescaline that night, and I said "Well, were you there? Did you do it?" and she said "I don't, you know, remember what I did that night." She said "I've been stoned on acid a dozen times" she said "But that night's the only night I can't remember exactly what I done" and so I says "Do you believe that you could have been involved in it?" and she said "Well, I don't believe that I could kill anyone because I don't have hostile tendencies." And I said "You could have just been holding the candle", and she kinda nodded her head.

[1329] Q: When you say "nodded her head", do you mean affirmative or negative?

A: Well, you know, just, you know, she didn't say yes, she didn't nod no or yes, either way, she just motioned her head.

COL ROCK: I'm sorry, which way did she motion her head?

WIT: It was an up and down motion.

COL ROCK: To you, would that normally mean that the individual agreed with you or disagreed with you?

WIT: I couldn't—I couldn't, it didn't—I mean, like she didn't want to answer it to me, in my opinion, because she didn't nod her head yes or no either way.

* * * *

[1333] MR. SEGAL: All right, thank you. You may cross examine. I beg your pardon. There is one other matter I must ask him about.

Q: Has any threat been made against you in regard to your revealing the information about what you saw on the morning of February 17th, and anything else about the activities and whereabouts of the young woman you've described, the girl and the hat?

A: Well, the night before last when I had a conversation outside the Village Shop, you know, I told her I wasn't living there any more, you know. She asked me why and I said my wife was upset because of what was going on, the hippies and everything, and she asked me, she said "Where do you live now?" and she point blank asked me my address. She wanted to know where my address was, so I told her. I didn't tell her my real address, I told her a phoney one, but then I started to leave. My wife, you know, went by in the car, so I walked up to my mother-in-law's to meet my wife, and as I started to walk away real fast she was talking to her boy friend, and she said "Where are you going?" I said "I gotta go now. My wife just passed by." And she said "What was your address?" and she asked me two times what my address was, and so, you know, I told her again the same address I told her before, and she said, you know, kind of jokingly, she said "Well, tell

your wife to lock the doors, because we'll be over to see you."

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## ARTICLE 32 TESTIMONY OF INVESTIGATOR WILLIAM F. IVORY

[1512] Q: Mr. Ivroy [sic], why were no notes taken of the interview with Miss Stokley?

A: I did have a notebook with me, and I started to take notes and she got very nervous and shied away, and I put my pen and notebook away.

Q: Did you make any notes at all in your notebook?

A: I just started—I believe I wrote her name down at the top of the page.

Q: And what did she do or say to indicate that she was objecting to your making notes of what she was saying?

A: She said something to the effect of what are you doing? What are you writing?

Q: And what did you say?

A: I said "Nothing, I'm not writing anything" and I just put it down.

Q: Did you ask her whether she objected to your making notes of the interview?

A: No, I did not.

Q: Why not?

A: I was concerned with getting over with the interview, rather than making her so nervous that she would not answer me at all.

Q: What was so terrible about making her nervous about asking her about her whereabouts on the morning of the 17th?

[1513] A: I don't know and that's why I put the notebook away so I could find out, so I could find out what she had to say.

Q: Did you find out where she [Helena Stoeckley] was between the hours of 2 a.m. and 4 a.m. on February 17th 1970?

A: No, I did not.

Q: Did you ask her where she was?

A: I did.

Q: What, if anything, did she say?

A: She said she could not recall, she could not remember.

Q: Did she indicate any reason why she was unable to recall?

A: Yes, sir, she did.

Q: And what was the reason?

A: She said that she had been out on marihuana.

Q: On Marihuana?

A: Yes, sir.

Q: Are those her words, that she was on marihuana?

A: That's correct.

Q: Mr Ivory, you—was she telling you that she couldn't remember where she was because she'd been using marihuana?

A: That's correct.

Q: Mr. Ivory, you've had occasion to investigate cases in which cannabis sativa has been used, haven't you?

A: Yes, I have.

Q: Do you know to your knowledge, is that a medically recognized result of smoking marihuana, to lose memory?

A: Not to my knowledge?

Q: Not to your knowledge. Were you told by anyone that Mr Posey had previously said that Miss Stokely said that she had been taking, at one time she said LSD and another time she said mescaline? No one ever told you that?

A: Would you go over that again, please?

Q: Had anyone ever told you that Mr. [*sic*] Stokley was reported to have said on one occasion she was using mescaline that night and on another [1514] occasion she reported to have said LSD that night?

A: She told me in that interview she was taking marihuana.

Q: Well, I want to know, were you armed with the information—

A: No, I was not.

Q: Now did you ask Miss Stokely why she was able to recall where she was since marihuana is not known to have the effect of impairing ones memory?

A: Yes, I did.

Q: And she said what?

A: She said she didn't know, she just couldn't remember.

Q: Now what color is Miss Stokely's hair?

A: Red.

Q: Would you say it is a dark red?

A: Yes.

Q: Did you ask her about a blond wig?

A: Yes, I did.

Q: And did she admit to having owned a blond wig up until about February 17?

A: I asked her specifically about the blond wig, and she said that she had worn one occasionally, but it was not her's, that it belonged to a girl friend and she did not have it.

Q: And did she say when she returned or disposed of that blond wig?

A: No, she did not.

Q: Did anybody ask her whether it had been shortly after February 17th, 1970?

A: It was subsequent to that date, but the exact date she couldn't recall.

Q: And did she give you the name of the girl?

A: No, she did not.

Q: Did you ask for that name?

A: Yes, I did.

Q: Did she refuse to give you that name?

A: No, she said she just couldn't recall which of the girls it belonged to.

Q: Did she tell you where it was that she had effected the return of the wig, the street or apartment, where the other girls lived?

A: No, she did not.

[1515] Q: Did you ask her where it was?

A: No, I did not.

Q: Did you ask her whether she had ever owned a large floppy hat?

A: Yes, I did.

Q: What, if anything, did she say about that?

A: She said yes she did.

Q: Did she indicate where that hat is now?

A: She indicated she gave it to someone, but she could not recall the name of the person she gave it to.

Q: And did she indicate where that episode in giving the hat away took place shortly after February 17th 1970?

A: She did not indicate the day, nor did I ask.

Q: Was there any reason why you didn't ask her when she stopped wearing or got rid of the hat?

A: No particular reason.

Q: Did you ask her whether she owned boots of any sort?

A: Yes, I did.

Q: And what did she say?

A: She said, yes, she did.

Q: And does she still own or wear leather boots?

A: Yes, she does.

Q: Did she have them on the day you saw her?

A: No, she did not.

Q: Did she describe to you what color they were?

A: She—the color she had around that period were black.

Q: What do you mean "around that period?" Did she indicate that she owned more than one pair of boots?

A: Yes.

Q: Did she ever indicate to you she owned brown boots?

A: No.

Q: What colors did she indicate she owned?

A: Black.

[1516] Q: Just black?

A: Black.

Q: Were they—do you know anything about the type of boots they were? Were they large boots, large open-

ings at the top, or were they boots that have to be zipped up because they were tight to the leg?

A: I do not know what type. She indicated they came to about this position on her leg, which will be maybe two or so inches below the knee.

Q: Did she indicate to you that she had given away or disposed of any pair of boots about the middle of February 1970?

A: Yes, she did.

Q: What did she say in that regard?

A: She said she threw them away?

Q: And did she know where she threw them away?

A: Yes, she threw—she indicated that the heel was worn or was broken from her boot, and since she had another pair of boots, she discarded them in a trash can.

Q: Now, did you ask Miss Stokely whether she would be willing to come here to this inquiry and tell us what she knew about her whereabouts of February 17th, 1970?

A: Yes, I did.

Q: And what, if anything, did she say?

A: She said no, she would not.

Q: Did you ask her why she would not come?

A: She indicated she didn't want to become involved.

COL ROCK: I'm sorry. She didn't want what?

WIT: Become involved.

Q: May I ask how she came to be in the office of the Chief of Detectives of Fayetteville police?

A: I had asked the detectives to be on the look out for her and if they got her to call me so I could talk to her.

Q: She was picked up by the Fayetteville police?

A: Let's not say "picked up." She was asked to come in to talk to us.

[1517] Q: Well, is there any reason why you couldn't ask her the same way the Fayetteville police did?

A: I did not know where she was living.

Q: Once she has arrived at the police headquarters at a request, was there any reason why you couldn't

make the same type request that she appear at these proceedings?

A: I asked her would she be willing to go to court, or I did not specifically say article 32 but court, and she said no, she would not.

Q: Did you talk to her about her interest in witchcraft?

A: No. The subject came up, yes.

Q: In what fashion did it come up?

A: I asked her what type of dress she usually wore. She said sometimes purple, sometimes black.

Q: What color of clothing was she wearing when you saw her?

A: Purple.

Q: Was she wearing a skirt or dress?

A: She was wearing a pants suit.

Q: Pants?

A: Suit.

Q: Pants suit?

A: Yes.

Q: What kind of footgear did she have on?

A: Shoes.

Q: What?

A: Shoes.

Q: Where does she live today?

A: I have no idea where she is now.

Q: All right, may I ask the date that you saw her in the Fayetteville Police Department, what was her address on that date?

A: She gave me an address on Arsenal Avenue.

Q: And what was that address, please?

A: 909.

[1518] Q: 909 Arsenal Avenue? Have you ever verified that address as to whether in fact she resided there?

A: I've been to the house but I've never found her at the house.

Q: You mean subsequent to the day you talked to her in the police station, you've been there. Is that right?

A: That's right.

Q: How long after that date did you go to her house to see whether she was there?

A: Oh, it was weeks, a few weeks.

Q: Well, you only talked to her about two weeks ago, I think.

A: Right, I believe I corrected myself later and said that I believe it might have been earlier, which is a few weeks.

Q: All right, let me ask you this. Did the interview of Miss Stokely take place before or after the last time these Article 32 proceedings convened, which was the second week of August?

A: It would have been subsequent to that.

Q: Subsequent. Did you ascertain whether she lived at the address at Arsenal Street that she gave you?

A: No, I did not. That is the address that she gives around town as being her address.

Q: Well, did you talk to anybody at that address?

A: I talked to a woman at that address.

Q: And did she say that Miss Stokely lived there?

A: She was being very cagey with me and would not answer. She answered, but—

Q: What did the woman say when you said "Is Helene Stokely living here?"

A: She said "No, I don't know anyone by that name."

Q: In other words, she denied knowing Helene Stokely?

A: Yes, at that time.

Q: Did you ask her whether she knew anybody by the name of Helen or anybody?

A: No.

Q: Did you show her the polaroid photograph that you have here and said is that the lady that lives in the house perhaps by some other name?

A: I did not have in my possession the picture at that time.

[1519] Q: Have you ever gone back subsequent with the photograph and showed it to the lady to see whether Helene Stokely lives at 909 Arsenal Street?

A: No, I haven't.

Q: Do you know where the Fayetteville police picked her up on the day that you interviewed her?

A: No, I do not.

Q: You have no idea how they found her?

A: No idea in the world.

Q: Do you know whether Helene Stokely has been fingerprinted by the Fayetteville police?

A: By the Fayetteville police, I'm sure she has.

Q: Well, why are you sure that she has been fingerprinted?

A: Because she was arrested.

Q: Do you know when she was arrested?

A: Yes, around the end of this month.

Q: The end of the month of—

A: Last month.

Q: July or August? The end of August?

A: Correct.

Q: What was she charged with?

A: Trespassing.

Q: Is it normal to fingerprint people here in Fayetteville when they are charged with trespassing?

A: When anyone is put in jail, to my knowledge, sir, they are fingerprinted.

Q: Do you have specific knowledge of whether Fayetteville police—

A: If they followed their usual procedures, yes.

Q: Do you know whether there is a set of prints of Helene Stokely in the Fayetteville police files prior to August of 1970?

A: I do not know.

Q: Do you know whether she was arrested prior to August 1970 at any time?

A: I know she was arrested but I don't know whether she was placed in jail or not.

[1520] Q: Well, where was she arrested prior to August 1970?

A: I don't know. I don't know any of the details of that.

Q: Did you ask to see whether you could get a set of her fingerprints prior to August 1970?

A: No, I did not.

Q: Was there any reason why you didn't ask for fingerprints?

A: No reason, sir. I had already obtained a set of fingerprints.

Q: When did you obtain a set of her fingerprints?

A: They were obtained on 19 February by the Federal Bureau.

Q: A set of her fingerprints?

A: Yes, however under an alias.

Q: What was the alias?

A: I don't know.

Q: You say you do not know the alias under which she was previously arrested. Can you find that out for us, sir?

A: She was using several alias.

Q: What alias does she use?

A: Margie Raynor.

Q: Raynor?

A: Yes, sir.

Q: What else, sir?

A: Margie Foster.

Q: Do you know any others?

A: Those are the only full names that I know.

Q: Do you know how old this young lady is?

A: I believe she's around eighteen years.

Q: Did you discuss with her whether she used LSD?

A: No, I did not.

Q: Did you discuss with her whether she regularly used any form of drugs?

A: Let me correct myself. Yes, I did.

Q: What, if anything, did she say in regard to her use of drugs?

[1521] A: She said she had tried marihuana and I believe she had tried LSD.

Q: When you say tried, did she tell you that she used LSD on a hundred or more occasions?

A: No, she did not.

Q: Did she indicate to you on how many occasions she used LSD?

A: No, she did not.

Q: Did she give you the names of the other young ladies with whom she lived in the building next door to where Mr Posey lived?

A: No, she did not. She gave me—

Q: Excuse me.

A: She gave me the first name of Marie.

Q: As one of the girls with whom she lived?

A: Yes.

Q: And what about the second girl with whom she lived? Did she give you any other name?

A: She said she did not remember the girl's name.

Q: Did you ask Miss Stokely what her relationship is with the person by the name of Paul Bowman?

A: Paul Bowman? The name is familiar but I—I can't relate it to that conversation.

Q: I believe that Paul Bowman would be known to Fayetteville police as a person who is suspected as dealing in narcotics. Perhaps his name is known to you in that connection too. Did you ask Miss Stokely anything about her—who her associates were, male associates?

A: Yes, I did.

Q: Were the answers as vague as all the other answers, by first names?

A: First names, yes, sir.

Q: Did she tell you what is the last thing she can remember doing prior to 4 a.m. on February 17th?

A: Yes, leaving the house she was living in alone, and

driving in the car, just driving aimlessly, she said.

Q: Did she have any idea about what time it was she left the house?

A: Sometime—midnight or after.

[1522] Q: Did she indicate how she fixed the time when she left the house?

A: No, just knew in her mind that it was midnight or after.

Q: You mean she knew in her mind or that's all she chose to tell?

A: Well, that's what she told me.

Q: Did you ask her for the description of the owner of that blue Mustang she was driving?

A: Yes, I did.

Q: And what, if anything, did she tell you in that regard?

A: He was a white male, former enlisted man in the Army, and she couldn't go into more specific details, other than the physical description.

Q: Did you ask her any questions about specific identification points?

A: I asked her to describe the man to me as best she could, and she said he was twenty or under and a white male, dark hair.

Q: Did you ask her any other questions in regard to the identification of that person, or the description of that person?

A: That's all she could furnish me, in any way of a description.

Q: But did you ask her any specific points of identification?

A: Yes, sir, I asked her to describe any facial features, etcetera.

Q: Is that fair to say that's the only type of question you put to her?

A: Yes, she just could give me a general description.

Q: When you say she could just give you, you mean she could or that's all she chose to give you?

A: I couldn't read her mind. That's what she gave me.

Q: How about her manner of demeanor? Did she strike you as being frank, candid and open?

A: Yes, she struck me as being frank.

Q: Candid and open. Is that right?

A: Right.

Q: And you thought a person who did not know the names of the persons she lived with as being frank, candid and open?

A: Yes.

Q: And you thought that her inability to tell you the last name of the owner of the automobile that she used for the evening was also frank, candid and open?

[1523] A: Yes.

Q: And you thought that her telling you that she could not remember where she was for approximately four hours, because she was smoking marihuana is a frank, candid and open answer?

A: That's the answer she gave me, and I couldn't get anything else.

Q: Well, I appreciate your difficulty in the interview, Mr Ivory. I don't underestimate that for a moment. What I am asking you is did you honestly take that as a frank, candid and open answer that she said because of marihuana she was not able to remember her whereabouts?

A: I could not—I could only take it as face value as what she gave me.

Q: Well, the face value of that statement is a lie, since you know that marihuana doesn't have that effect on persons.

A: I've never tried it. I do not know.

Q: Well, I didn't again suggest that. I said based upon your experience as an investigator, I am sure you've talked with physicians in regard to marihauna, the fact you are aware, I am sure, that marihuana does not—is not reported in any way to effect the memory processes.

A: As far as I know.

Q: So knowing that, at least, you still felt that she was being frank, candid and open when she told you that she couldn't remember her whereabouts when she was smoking marihuana?

A: What else could I say?

Q: You could say that she was a liar and ask her to be more specific about what she was doing and where she was.

A: I possibly could have.

Q: But you did not, sir?

A: No, I did not.

Q: Did you ask Miss Stokely about her relationship with Mr. Posey?

A: Yes, I did.

Q: And did she indicate that Mr Posey had any grudge or malice against her that she knew of?

A: She couldn't understand why that he had, had—she couldn't understand really why he had any—she said that on occasion she had teased him [1524] about being a square but that was the extent of her relationship with him.

Q: Did Miss Stokely admit or deny having a had a conversation with Mr Posey on the street in August 1970, earlier last month, in the Haymount Section of town?

A: No, I didn't query her about that.

Q: Were you aware that Mr Posey had testified in these proceedings that he had seen Miss Stokely, if that's the right person, that he talked to, on or about August the 12th of 1970?

A: No, I didn't know that.

Q: Were you told by anybody that Posey had said that he had seen Miss Stokely during the month of August?

A: No.

Q: As far as you know, when was the last time Mr Posey is supposed to have been in the presence of Miss Stokely?

A: On dates she was—if not vague, she just didn't know dates.

Q: Well, did you ask her when was the last time she saw Posey?

A: No, I did not.

Q: Was there any reason why you didn't ask her that?

A: No, no particular reason.

Q: You have no more information than you can give as to when she believes was the last time she was in Mr Posey's company?

A: No.

Q: Did she indicate when she moved from the apartment next door to where Mr Posey lived?

A: No, she did not.

Q: Did you ask her when?

A: No.

Q: Were you aware that Mr Posey had said that she moved within a short period, maybe a matter of days or week, after the MacDonald episode, on February 17th?

A: No, I was not aware of this.

[1525] Q: And you did not ask her whether, you know, when she moved to the address at Arsenal Street?

A: No, I did not.

Q: Would you tell me, what was the purpose of your interviewing Miss Stokely?

A: To find out if, in fact, she was involved, or if there was any implication of her being involved in anything at Fort Bragg.

Q: You mean—anything at Fort Bragg—I assume you are talking about the MacDonald killings?

A: Correct.

Q: So you went there for the purpose of interrogating her as a possible suspect. Is that right?

A: correct.

Q: How long did this interview take place?

A: Oh, we were in there for about an hour, I'd say.

Q: And how did your interview end?

A: It ended wtih that photograph being taken.

Q: With that particular photograph being taken?

A: correct.

Q: In other words, that photograph is marked with what identification?

A: G-105.

Q: So that's a photograph that was in existence at the time we had our last hearings here from August 9th through 14th of 1970?

A: Not recalling the date, I don't know if they were in session or not.

Q: Well, I will suggest to you that the record will show that that photograph was marked into evidence during the week of August the 9th through 14th of 1970, and that therefore you must have seen her, except your description of how these things took place, prior to Monday, August the 10th, 1970. Is that right, sir? Would that be approximately right?

A: It had to have been—it was—if I could recall the date, I could say yes or no. I don't recall the date I talked to her, but evidently it was before the picture was put in evidence.

Q: Now you specifically asked the assistance of Fayetteville police to find this young lady for the purpose of questioning. Is that right?

[1526] A: That's correct.

Q: Now you told us the only reason you wanted to question her was to see what her connection was with the MacDonald case. Is that right?

A: Correct.

Q: What made her a suspect in your mind as a potential connection with the MacDonald case?

A: It came to my attention that she was the one that Mr Posey had testified about.

Q: Well, if the photograph was introduced here in evidence during the week of the 9th through the 14th, Mr Posey didn't testify until about the 13th of August, how could you have known about her prior to the 13th of August?

A: I'll have to take your word for these dates, counselor, because I just don't know.

Q: I think we have the transcript of the case available. You mean on the basis of Mr Posey's testimony that made this young lady a suspect. Is that right? What is it that made her a suspect? Mr Posey's testimony?

A: Correct.

Q: Now what you have done to check out the various explanations of stories this young lady gave you?

A: Well, it was so vague it was really not much background to be done on it.

Q: Did you make any attempt to find the Blue Mustang she talked about?

A: Taking again her testimony, she said the man is now out of the Army and left the area.

Q: That was just her word.

A: Well, there are many blue Mustangs in that area.

Q: But, now, you know, Mr Ivory, I really find it very difficult to accept the idea that you just listened to this lady's statements point blank and said, well that's it, and wrote her off as a suspect in this case. Is that what you did?

CPT SOMERS: I object. Now the counsel is admonishing the witness and verging on badgering the witness. If he wishes to ask questions let him ask [1527] questions, but to lecture the witness, I object to that.

MR SEGAL: Let me say this, sir. Captain Somers is perfectly right, except that it really—it really asks a great deal, and I would like to cut the red tape and if Mr Ivory can just explain to me whether it is just standard to take a series of, you know, very vague explanations and say, oh, well, that's the end of it. We won't be able to check this person out in a triple murder case, or whether there is some other reason. It just begets all sensibility to think this is the way investigations are handled. They are not handled that way. In my career, sir, I have been involved in over 500 murder cases. I've represented 7,000 defendants in 13 years and I have never heard of a true suspect being handled this way. Now, there may be good reasons to disregard this young lady. I think Mr Ivory ought to be allowed to tell us now really why anything substantial hasn't been done to check out Helene Stokely and her explanations, which on their face, particularly this explanation about the marihuana is palpably unacceptable, and I think that the question is put for that purpose. If it is really that offensive to everyone I will go about it in a different way.

CPT BEALE: Mr Segal, the form of your question was argumentative and I think it would be best if you would just stick to the normal procedure on cross examination of asking the witness questions.

Q: Now you say this young lady was arrested for trespassing. Is that right?

A: Correct.

Q: Do you have—did the Fayetteville police take an official police photograph in connection with that arrest?

A: I don't know.

Q: Is it the standard practice to do that?

A: I—I imagine so. Their ID bureau has both fingerprints and photos.

Q: Now where was it that she was trespassing?

A: At the Village Inn or Village Shop in Haymount Section of Fayetteville.

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UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA FAYETTEVILLE DIVISION

Criminal No. 75-26-CR-3

UNITED STATES OF AMERICA, PLAINTIFF

*vs.*

JEFFREY R. MACDONALD, DEFENDANT

## MOTION TO DISMISS INDICTMENT FOR DENIAL OF RIGHT TO SPEEDY PROSECUTION AND TRIAL

The defendant, JEFFREY R. MacDONALD, respectfully moves this Court, pursuant to the Constitution and laws of the United States and to Federal Rule of Criminal Procedure 48, to dismiss the indictment against him because of the denial of his right to speedy prosecution and trial. In support of the said motion the defendant alleges as follows:

1. In February, 1970, the defendant, a medical doctor, was serving in the United States Army, attached to the Sixth Special Forces Group, at Ft. Bragg, North Carolina.

2. On February 17, 1970, the defendant's wife, COLETTE, and his two daughters, KRISTEN, age 3, and KIMBERLEY, age 6, were murdered, and the defendant stabbed and wounded by a group of intruders in the defendant's home, located on Ft. Bragg, North Carolina.

3. After the Army investigation failed to locate the perpetrators of the said crime, the Army, in April, 1970, caused the defendant to be arrested and charged with the murder of his family.

4. Pursuant to the Uniform Code of Military Justice (UCMJ) the charges against the defendant were submitted to an officer appointed pursuant to Article 32 of the UCMJ. The said officer conducted judicial proceedings

from June through September, 1970, including four full weeks of testimony in Court.

At all times throughout the said proceedings the Government was represented by counsel. The defendant was present at all times throughout these proceedings and was represented by counsel.

5. The Government presented all of the evidence known to it and which had been assembled as a result of the efforts of more than one hundred military and civilian law enforcement investigators. The said investigators had assembled evidence from several thousand witnesses in various countries throughout the world.

6. All physical evidence that had been obtained by the Government was subjected to intensive examination at the criminal investigation laboratories of the Provost Marshal General of the United States Army, located at Ft. Gordon, Georgia. The said evidence was also examined by other experts retained by the Government.

7. The Government called twenty-seven (27) witnesses in its case-in-chief against the defendant and in rebuttal to defense testimony.

8. The defendant offered a full defense to the charges against him at the said procedings. He testified at length under oath and was subjected to a full and searching cross-examination by counsel for the Government. The defendant was also examined extensively by the Court itself.

9. The defendant called twenty-nine (29) witnesses on his behalf.

10. The Government was required by the Court to present all the evidence known to it in support of the charges against the defendant, and it did so.

11. In September, 1970, following the conclusion of these proceedings the Court made only two findings:

(a) The charges against the defendant were false.

(b) That the Government should pursue the investigation of another named individual as a suspect in the murders of the MacDonald family and the assault on the defendant.

12. The conclusions of the presiding officer at the Article 32 proceedings were submitted to Major General Edward Flanagan, Commanding General of the John F. Kennedy Center for Special Warfare and U.S. Army Special Forces. The said conclusions were subjected to a full, independent judicial review by General FLANAGAN.

13. In October 1970 General FLANAGAN entered an order dismissing finally and with prejudice the charges against the defendant brought by the Government.

14. The order of General FLANAGAN dismissing with prejudice the charges against the defendant was subjected to an additional independent judicial review by Lt. General JOHN J. TOLSON, Commanding General of the XVIII Airborne Corps, Fort Bragg, North Carolina. Following the review by General TOLSON, he concurred in the adjudication by General FLANAGAN and affirmed the dismissal of the charges against the defendant.

15. On December 5, 1970, the defendant was Honorably Discharged from the Army.

16. From January, 1971, to January, 1972, the Criminal Investigation Division (CID) of the United States Army conducted what it contends was a complete, extensive and thorough reinvestigation of the murders of the MacDonald family.

17. In early 1972, the CID requested the United States Attorney for the Eastern District of North Carolina to seek an indictment of the defendant for the murders of his family.

18. The said United States Attorney failed, refused and neglected to seek an indictment in the said matter and took no substantive action on the requests for the indictment.

19. The defendant is advised, believes and therefore avers that in early 1972 the CID requested the Department of Justice to direct that an indictment be sought against the defendant in the Eastern District of North Carolina.

20. From early 1972 until July, 1974, the Department of Justice failed, refused and neglected to act on the request of the Army to seek an indictment of the defendant. During the said period the Department of Justice took no substantive action on the request to proceed against the defendant. Further, no legally valid reasons existed for the delay in instituting any action against the defendant, except that there was no evidence to support such an accusation.

21. From early 1972 until July, 1974, the Department of Justice received requests from the defendant and from other persons that a final decision be made in regard to proceeding with the accusations against the defendant, including a speedy trial if he was to be accused.

22. On January 10, 1974, CARL W. BELCHER, Chief of the General Crimes Section, Criminal Division, Department of Justice, stated in writing that:

> ". . . the evidence currently available in this case is insufficient to warrant prosecution against Dr. MacDonald at this time."

23. From January 10, 1974, the date of BELCHER's statement, until August 12, 1974, when the Grand Jury was empaneled which subsequently indicted the defendant, the Government obtained no additional new evidence against the defendant.

24. Despite the conclusion of Government Attorney BELCHER on January 10, 1974, the Department of Justice in July of 1974 instituted proceedings to have the accusation against the defendant submitted to the Grand Jury for the Eastern District of North Carolina which was to be empaneled August 12, 1974.

25. The decision of the Department of Justice on July, 1974, to submit the accusations against the defendant and seek an indictment of him before the Grand Jury was made as the result of pressures on the Department of Justice from outside sources and not because any new evidence had become available to the Government.

26. The conduct of the proceedings before the Grand Jury from August 12, 1974, through January 24, 1975 were needlessly and negligently delayed by the Government in total and complete disregard of the defendant's right to a speedy disposition of the charges against him and of his right to a speedy trial.

27. The Government, by its own admission, obtained no new evidence against the defendant from September, 1970, until the commencement of the Grand Jury proceedings on August 12, 1974.

The Government, by its own admission, presented no new evidence to the Grand Jury.

The Government, by its own admission, has conceded that the only difference between the initial proceedings against the defendant in 1970 and the proceedings before the Grand Jury was that the physical evidence collected by the Government in 1970 was "reinterpreted" by Government technicians.

28. The physical evidence referred to above was available to the Government at all times from February 17, 1970 through January 24, 1975.

The technicians who reinterpreted the physical evidence were available to the Government at all times since February 17, 1970.

29. The failure, refusal and neglect of the Government to submit the said physical evidence for such interpretation from 1970 to 1975 was the result of negligence, incompetence and indifference on the part of the Government to the constitutional rights of the defendant.

30. The evidence that was used by the Government to obtain the present indictment, and that will be used against the defendant at this trial, together with the witnesses who will be called by the Government have been known and available to the Government at all times in the years 1970, 1971, 1972, 1973, 1974, and 1975.

31. The United States Army and its Criminal investigation Division have been in charge or actively connected with the investigation of the murders of the MACDONALD family from February 17, 1970, through the indictment of the defendant on January 23, 1975, to the present time.

32. The Federal Bureau of Investigation was actively participating in and connected with the investigation of the murders of the MACDONALD family in February and March of 1970, and throughout the Grand Jury proceedings in this case. The FBI was available at all times from March, 1970 until July, 1974, to assist in the said investigation if it had been requested to do so by the United States Army, the Criminal Investigation Division of the Army or the Department of Justice.

33. The failure of the Government to act to bring the defendant to trial until more than five years have elapsed since the criminal proceedings were initiated against him in April, 1970, under the circumstances set out herein, constitute a denial of the rights of the defendant to a speedy trial, as guaranteed by the Sixth Amendment, and to due process of law, under the Fifth Amendment to the Constitution of the United States.

34. No other relief than the dismissal of the indictment can vindicate the defendant's rights to a speedy trial, and to due process of law, which rights attached when the criminal proceedings in this matter were initiated against the defendant in April, 1970.

WHEREFORE, the defendant prays that Honorable Court order the above-captioned indictment against the defendant be dismissed.

Dated: April 5, 1975

/s/ Bernard L. Segal
BERNARD L. SEGAL

Suite 220, 536 Mission Street
San Francisco, California 94105

/s/ Durant Williams Escott
DURANT WILLIAMS ESCOTT
Attorneys for the Defendant

412 Law Building
Charlotte, North Carolina 28202

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

Criminal No. 75-26-CR-3

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

JEFFREY R. MACDONALD, DEFENDANT

MOTION TO DISMISS INDICTMENT BECAUSE OF DENIAL OF DEFENDANT'S RIGHT TO A SPEEDY TRIAL

TO THE HONORABLE FRANKLIN T. DUPREE, JR., JUDGE OF SAID COURT:

The Defendant, JEFFREY R. MacDONALD, by his attorneys, moves the Court for an order dismissing the indictment against him in the above-captioned matter, on the grounds that the indictment and trial herein are barred because of the Government's intentional and impermissible denial of Defendant's speedy trial right under the Sixth Amendment to the United States Constitution. *United States* v. *MacDonald*, 531 F.2d 196 (4th Cir. 1976) (law of this case), *rev'd on other grounds*, 435 U.S. 850 (1978).

In addition to all the reasons set forth in the cited opinion, which should itself be dispositive of this case, the Court should now consider the fact that, at oral argument before the Supreme Court, counsel for the Government represented to the Supreme Court that the Government had intentionally delayed bringing this matter before the grand jury for the reason that within the Department of Justice there was a serious split of opinion as to whether the Government could obtain a conviction, and that this split of opinion took several years to resolve. Thus, the only purpose for the delay which the

Government has admitted to, was to obtain a tactical advantage over the Defendant.
Dated: July 13, 1979

Respectfully submitted,

By /s/ Bernard L. Segal
BERNARD L. SEGAL, Esquire
Post Office Box 1151
Raleigh, North Carolina 27602
Attorney for Defendant
Jeffrey R. MacDonald

and with him

By /s/ Wade M. Smith
WADE M. SMITH, Esquire
Tharrington, Smith & Hargrove
Post Office Box 1151
Raleigh, North Carolina 27602

## RELEVANT PORTIONS OF TRIAL TRANSCRIPT TESTIMONY OF HELENA STOECKLEY

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[5548] Q Now, I want to direct your attention to February of 1970, Ms. Stoeckley. I want to ask you about the early morning hours of February 17th of 1970; all right?

A Yes, sir.

Q Well, just to give us a little context—let me back it up. Late on the evening of February 16, 1970, what were you doing if you recall?

A In the evening, I don't know.

Q What is the last thing you remember doing on February 16, 1970—that's Monday—Monday evening?

A The last thing I remember doing is talking to a friend of mine in my driveway.

Q And who would that person have been? Do you remember the first name?

A Greg.

Q About what time of the day or night was it when you spoke to him?

A It was around midnight.

Q That means it would be February 16th if it was 11:59 p.m. and if it was midnight, it was February 17th?

MR. MURTAGH: OBJECTION, Your Honor.

MR. SEGAL: Can we not get the times straight in this case, Your Honor, without an objection [5549] from the Government? I can't understand why that should be a subject of any objection to anybody in this court that would want to know.

THE COURT: Is it all right if they object, and the objection is OVERRULED?

MR. SEGAL: It is not that question, Your Honor—

THE COURT: (Interposing) It is that question. Now, you ask your next one.

MR. SEGAL: Thank you. May I have Your Honor's indulgence for one second?

(Pause.)

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[5551] THE COURT: Any further questions of this witness?

MR. SEGAL: Yes, Your Honor.

THE COURT: Go ahead.

BY MR. SEGAL:

Q Now, you say you recall standing in your driveway about midnight either at the end of February 16th or the beginning of February 17th; is that right—1970?

A Yes, sir.

Q Where did you live? What was your address at that time?

A I'm not sure of the number, but it was on Clark Street.

Q Did you have a neighbor by the name of Bill Posey —William Posey—at that time?

A Yes, sir.

Q And did you know Mr. Posey—who he was?

A Yes, sir.

Q Was this a whole house or an apartment that you were living in?

A It was a house made into several different apartments.

[5552] Q Was there anything that was—well, what you would call—unusual going on that night inside the apartment?

A Not inside my apartment; no, sir.

Q All right, inside the house? Was there any painting going on at that time?

A Not at that time.

Q At some later time?

A Yes, sir.

Q When was that?

A When I returned to the house.

Q When you returned—I see. Now, how long did this conversation that you were having with this man in your driveway take place?

A I don't know how long it took, but I know when he left.

Q When did he leave?

A At exactly midnight. He had to get back to Fort Bragg for guard duty or something.

Q Do you know who that man was with at that time?

A He was with the 82nd Airborne Division.

Q And was he in uniform or out of uniform at that time?

A He was out of uniform.

[5553] Q Now, I ask you: after he left, what did you do?

A I'm not sure what I did after he left. I went back in the house and I don't remember what I did.

Q Had you had any drugs during the day of February 16, 1970?

A Yes, sir.

Q Would you tell us, to the best of your recollection, Ms. Stoeckley, what you had taken—what type of drugs you had taken that day?

A Well, I had taken for sure the opium and the heroin. I had smoked grass all day, and then, when Greg left, he left me with a hit of mescaline which I swallowed there at the car before he backed out.

Q Right before he left you say you received some mescaline or took some mescaline?

A Yes, sir.

Q Again, your voice is quiet and soft so it is a little hard for me to hear the details. I did not hear how you got that. Was it from him?

A He gave it to me and I swallowed it while he was still standing there.

[5554] BY MR. SEGAL:

Q What form did you take that mescaline in?

A Tablet.

Q Do you remember how many you took?

A One.

Q How soon thereafter did you start feeling any of the effects of the mescaline?

A It was good mescaline; I guess pretty soon afterwards. I am not sure about the time.

Q Is it hard to judge time when you are using a drug like that?

A Not usually.

Q Just so that I don't misunderstand you, were you using a quantity of heroin and opium on that day—February 16th—that you previously described this morning—about six or seven intravenous injections?

A Yes, sir.

Q Besides that, and the mescaline and the marihuana, do you have any recollection of any other drugs you used that day?

A No, sir.

Q Do you have any recollection—what is your next recollection after taking mescaline?

A Returning to the house later that morning.

Q Can you pinpoint in any way what time it [5555] was that you came back to the house?

A About 4:30 or 5:00 o'clock.

Q In the morning?

A Yes, sir.

Q How did you—when you say you came back—I guess it is fair to assume you were awake. How did you come back. What form of transportation did you use?

A In a car.

Q You have a recollection of coming back to that address around 4:30 or 5:00 in the morning?

A Yes, sir.

Q Were you a passenger in the car or were you driving the car?

A I was a passenger.

Q Do you offhand know what kind of car it was?

A Not what kind—it was a blue car. That's all I know.

Q It was a blue car. The make or model you have no knowledge of?

A It was a smaller-type car. I don't know what kind.

Q Do you know whether or not it was a Mustang, Ford Mustang?

[5556] MR. BLACKBURN: OBJECTION, Your Honor.

THE WITNESS: Not for sure, no, sir.

THE COURT: OVERRULED.

BY MR. SEGAL:

Q Who else was in the car, Ms. Stoeckley, when this recollection comes back to you?

A I can't remember their names. Just some soldiers from Fort Bragg.

Q How many were there?

A Two or three—I don't know.

Q Do you know what race these other men were?

A Not for sure, no.

Q When you say "not for sure," that means you would be guessing if you were to try to identify the race of each and every one of the three men in that car?

A Yes, sir.

Q Is there any explanation you can give us as to why you can recall coming back—or how you are able to recall coming back in the car, but cannot recall who the persons were who were in the car with you?

A 'Cause they just dropped me off and I got out and went in the house.

Q Do you have a specific recollection of where you were between midnight or shortly after midnight and 4:35 in the morning?

[5557] A No, sir.

Q Do you have a specific recollection as to what you did at that time, between midnight and a little bit after 4:35 in the morning?

A No, sir.

Q Do you remember in the months after February 17th, the first few days after February 17th, having some conversation with your neighbor, Bill Posey?

A Yes, sir.

Q Do you recall talking with him about the subject of the MacDonald murders at Fort Bragg?

A The subject came up but I don't remember what was said.

Q Let me break the question, if I can, into two parts. Do you or don't you recall at least talking about the MacDonald murders with Bill Posey within the week after February 17th, 1970?

A Yes, sir.

Q Do you have a recollection of anything that you said to him at that time about the MacDonald family and murders that had taken place?

A Only one conversation that I do remember having.

Q Okay, can you tell us about that [5558] conversation? First of all, do you remember approximately when after February 17th, 1970, that that conversation took place?

A It was about a week and a half later I would say. He was up on Haymont Hill, and I ran into him up there; and I was just fooling around. I knew—you know, he seemed to be trying to put me on the spot or something.

So, I don't remember the extent of the conversation, but it ended up by my telling him to tell his wife to keep her door locked.

Q May I ask, do you recall talking about the MacDonald murders before this remark was made?

MR. BLACKBURN: Your Honor, we would OBJECT.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q What was the subject matter that you were talking about before you made this comment to Mr. Posey?

A I'm not sure.

Q Did you have some other conversation with Bill Posey between February of 1970 and say August of 1970?

A Several times.

Q Did the subject of the MacDonald murders [5559] come up in those conversations?

A Usually.

MR. BLACKBURN: I would OBJECT to this line of questioning.

THE COURT: Well, I cannot rule on an objection to a line of questioning. If there is a question I will try to rule on that.

MR. SEGAL: I'm sorry; I could not hear Your Honor's ruling.

MR. BLACKBURN: I WITHDRAW the objection.

THE COURT: That one is over. I will tell you though, he apparently wanted to object to a line of questioning and it is a little bit difficult for the Court to make a ruling on that kind of an objection; but I said if you made a specific question and there was a specific objection to that question, I would undertake to rule on that. That is what I told him.

MR. SEGAL: Thank you. I gather the Government has withdrawn the objection?

THE COURT: They did.

BY MR. SEGAL:

Q What I was asking, Ms. Stoeckley, was, you did tell us of having some conversations with Bill Posey, other than the one you mentioned between then [5560] and August of 1970, right?

A Yes, sir.

Q I would ask you, did any of those conversations involve the subject of the MacDonald murders?

A Yes, sir.

Q Did any of those conversations involve where you were and what you had done between midnight and 5:00 a.m. on February 17th?

MR. BLACKBURN: Your Honor, we would OBJECT to leading in the questioning of the witness.

THE COURT: OVERRULED.

BY MR. SEGAL:

Q Did they involve that subject matter?

A Yes, sir.

Q Do you remember now what you said to Mr. Posey about those matters?

A Not specifically, no.

Q Do you recall anything that you told him during that period of time as to where you were between midnight and 5:00 a.m. on February 17, 1970?

MR. BLACKBURN: OBJECTION.

THE COURT: OVERRULED.

BY MR. SEGAL.

Q Do you recall what you said to him?

A I just told him I did not know where I was.

[5561] Q Did you tell him anything else that you now remember saying about where you were between midnight and 5:00 a.m.?

A No, sir.

Q Later on in 1970, you moved to Nashville, Tennessee, didn't you?

A Yes, sir.

Q Did the MacDonald murders have anything to do with your decision to move to Nashville?

A To some extent, yes.

Q What was the extent. Tell us about that, please?

A The police harrassment and things like that, and involvement of the family name. I just thought it would be best to move away.

Q And when you were in Nashville, where did you live?

A When I first moved there I lived in a dormitory. Then I moved out into an apartment.

Q Do you know what street that apartment was located on?

A Portland Avenue.

Q Portland Avenue?

A Yes, sir.

Q Did you have a neighbor when you lived on [5562] Portland Avenue by the name of Jane Zillioux? Did you know a lady by that name?

A She was Jane McCampbell, yes, sir.

Q Jane—

A (Interposing) McCampbell.

Q Jane McCampbell, but you now know her by her married name of Zillioux?

A Yes, sir.

Q Do you recall having a conversation in the latter part of 1970 with Jane McCampbell Zillioux about the MacDonald murders?

A Yes, sir.

[5563] BY MR. SEGAL:

Q Do you remember approximately when that took place?

A No; I was real sick that day when she came over to check on me. She was sort of afraid of me, anyway. She was not used to being around drug addicts and things like that. She was not sure what was wrong with me, so she was sort of in a hurry to leave.

Q Is that the latter of part of 1970, though?

A Yes, sir.

Q You say you were "sick." What were you suffering from at that time?

A Hepatitis.

Q Have you suffered from chronic hepatitis for some years?

A Nine years now; yes, sir.

Q When did you first become a victim of hepatitis?

A 1969.

Q Do you recall Mrs. Zillioux talking to you about your condition at that time—about the way you were feeling, the sickness you were having?

A Yes, sir.

Q Is that clear in your mind?

A Not real clear; no.

[5564] Q Do you recall the subject of the MacDonald murders coming up at that time when you were talking to Mrs. Zillioux?

A No; I don't.

Q Are you saying you don't recall it being talked about, or you don't recall what was said, if it was talked about?

A I don't recall what was said.

Q Again, I am going to break the question into two parts. First of all, I just want to know if you can recall the subject matter coming up? I don't ask you to say yet whether you remember what was said; all right?

A Yes, sir.

Q Do you recall, Ms. Stoeckley, that the subject of the MacDonald murders came up on that visit when Mrs. Zillioux came over to your apartment?

A Yes, sir.

Q Do you recall what you said to her at that time?

A No, sir.

Q Did you also know in Nashville in 1970 a man by the name of Red Underhill?

A Yes, sir.

Q Who is Red?

A He was a friend of Jane's and Bonnie Hudgins, [5565] another friend of mine in Nashville.

Q Would it be fair to say that you, Jane, Bonnie and Red all lived, first of all, very close together, did you not?

A We did not live close together. Bonnie had a store on the corner and Jane lived across the street from me, and Red was just a frequent visitor in the area.

Q Do you recall in late 1970 Red Underhill coming to your apartment? Do you remember such a visit by him?

A I remember him knocking on the door; yeah.

Q Do you recall talking with him at that time? I am not asking whether you recall the contents again, but I only want to ask you whether you recall talking to Red Underhill at that time?

A All I recall is when I finally answered the door to him and seeing who it was, and then I went back in and sat down.

Q Do you remember Red Underhill coming in?

(Witness nods affirmatively.)

Q Again, I have to ask you to say "yes" or "no."

A Yes, sir.

Q Do you have any recollection at all—well, first of all, do you recall the subject of the MacDonald murders coming up at that time when Red Underhill came [5566] there?

A No, sir.

Q Do you recall Red Underhill leaving your apartment, though?

A Yes, sir.

Q Am I correct in understanding that you do not have any recollection of what was said, though?

A No; because when Red came to the apartment I was sort of upset, which was one of the reasons he left.

Q I am sorry?

A That was one of the reasons he left so quick, because he wanted to go get Bonnie to see what was wrong with me.

Q He wanted to get Bonnie Hudgins to help you?

(Witness nods affirmatively.)

Q Yes?

A Yes, sir.

Q Just to finish that discussion—do you remember that during the time that Red was there and came to your apartment, the subject of the murders at Fort Bragg—do you remember that subject coming up?

MR. ANDERSON: OBJECTION.

THE COURT: SUSTAINED. She answered that.

MR. SEGAL: I thought it was not clear, [5567] Your Honor I am sorry.

BY MR. SEGAL:

Q Do you recall in 1970 and '71, while you were in Nashville—do you remember meeting a man by the name of Jim Gaddis?

A Yes, sir.

Q Who is or who was Jim Gaddis?

A He was a Metro patrolman at that time when I met him.

Q When you say "Metro," you mean Metropolitan Nashville Police Department?

A Yes, sir.

Q Was he a uniformed patrolmen, or was he on some sort of special assignment?

A He was on special assignment with Internal Affairs.

Q He was on special assignment with what?

A With Internal Affairs.

Q How long did you know Jim Gaddis?

A About a year and a half, I guess.

Q Do you recall at some time during the period when you were an acquaintance of Jim Gaddis the subject of the MacDonald murders at Fort Bragg coming up?

A Several times.

Q Several times? Do you recall what you said, [5568] the words you said about where you were and

what you did on February 17, 1970, when you spoke to Jim Gaddis?

A Not specifically.

Q Did I ask you when I talked to you yesterday to try and think of the words that you said at those times you spoke to Mr. Gaddis?

MR. BLACKBURN: OBJECTION.

THE COURT: OVERRULED.

BY MR. SEGAL:

Q Did I ask you to try and think of those?

A You asked me, but I can't remember anything that was said.

Q That was the next question. Did I ask you to think about it? Have you tried?

A I have tried, but I don't remember what was said.

Q Do you recall talking to a CID Agent in 1970 and '71?

A I talked to several CID Agents.

Q Do you remember one particular CID Agent by the name of Mr. Brisentine? Does that name at all sound familiar to you?

A The name does; yes, sir.

Q Do you remember the name of any other CID Agent?

[5569] A Mahon.

Q Mr. Mahon? Is it your recollection that Mr. Mahon and Mr. Brisentine saw you at the same time?

A Yes, sir.

Q If I were to suggest to you that this was about April 24th of 1971, would you have any reason to disagree with that?

A No, sir.

Q Was that discussion about—or in that discussion, did the subject of the MacDonald murders come up when you were asked questions about that?

A That was the topic of conversation.

Q If you recall the conversation right, do you remember what you told Mr. Brisentine at that time?

A No, sir.

Q And that includes—I will go into the whole question. Do you recall what you told Mr. Brisentine, if anything, about what you may have done on the early morning hours of February 17, 1970?

A All I told the CID whenever I talked to them was I didn't know where I was at that time.

Q The conversation with Mr. Brisentine—did it last more than about 30 seconds?

A Yes, sir.

Q About how long did it last, yould you say?

[5570] A Approximately an hour, I would say.

Q Do you recall anything else that you said to Mr. Brisentine on April 24, 1971, about the MacDonald murders?

A No, sir.

Q Did you know a policeman—actually, a detective—in Fayetteville in 1969-1970, by the name of P. E. Beasley?

A Yes, sir.

Q How old a man was Mr. Beasley at that time?

A About 50 years old.

Q About 50 years old? And what was Mr. Beasley's work in the police department at Fayetteville at that time, if you know?

A He was w[illegible] the Inter-Agency Bureau of Narcotics and Dangerous Drugs.

[5571] BY MR. SEGAL:

Q When you say the Inter-Agency Bureau of Narcotics and Drugs, do you know what that was? What is the Inter-Agency Bureau?

A It was made up of CID and city police and different agencies.

Q When did you first meet Mr. Beasley?

A I guess the first time he busted me.

Q That was your introduction; right?

A Yes, sir.

Q Well, when did that first contact with Beasley take place?

A Late 1969.

Q Was that an arrest for a narcotics law violation against you?

A Not the first one; no, sir. Not the first time he busted me; no, sir.

Q What was it for?

A I think it was for trespassing.

Q Did you and Mr. Beasley have other similar contacts afterwards?

A Only in narcotics.

Q Did he bust you again?

A Yes, sir.

Q Did you continue to know Mr. Beasley all [5572] the time that you remained living in Fayetteville?

A Yes, sir.

Q What was your relationship with him? Was he an enemy, a stranger to you? Just describe in your own words.

A I considered him a very good friend.

Q Was Mr. Beasley somebody you trusted?

A Yes, sir.

Q Did Mr. Beasley express some trust in you?

A Yes, sir.

Q Did you ever know Mr. Beasley ever to do anything as far as you were concerned that you couldn't depend upon or rely upon in your own experiences with him?

A Never.

Q Do you consider Mr. Beasley today, here—August 1979—to still be a friend of yours?

A Yes, sir.

Q Did you stay in contact with Mr. Beasley after you left Fayetteville?

A Yes, sir.

Q How did you do that, Ms. Stoeckley?

A Well, if I was visiting Fayetteville, I would call him at the station. One time he was in the hospital. I went to see him when he was at home.

[5573] Q Did you ever have occasion to write Mr. Beasley?

A I think I did; yes, sir.

Q You talked to him over the years; is that right?

A Well, he came to Nashville too.

Q He came to Nashville too. Do you recall when he came to Nashville?

A Sure do.

Q About when?

A About 1972. He came up there with a CID agent, Dick Mahon.

Q And at that time did the subject of the MacDonald murders come up?

A That was his reason for being there; yes, sir.

Q If I were to suggest to you that that was probably more like between February 27th of 1971, and March the 1st of 1971, would you have any reason to think otherwise as far as the dates?

A No, sir.

Q Did you not talk to Mr. Beasley on several occasions between those three dates—the 27th through the 1st of March? Did you have more than one conversation with him during that period of time?

[5574] A Yes, sir.

Q And were the conversations about the MacDonald killing at Fort Bragg in February of 1970?

A Yes, sir.

Q You recall exactly the subject matter of those conversations; is that right?

A Yes, sir.

Q Do you have a recollection—a clear recollection in mind—of what you said at that time?

A No; I just asked him to see where I stood, if I was in any trouble or what.

Q Do you have any other recollection of what you said to him about the events of February 17, 1970?

A Not specifically.

Q Now, did you have occasion to talk with Mr. Beasley anytime recently?

A Recently?

Q Yes.

A Well, yesterday.

Q Yesterday. Now, I guess we ought to make it clear. Was yesterday the first time that you and I had ever met and talked to each other?

A Yes, sir.

Q When I talked to you, was Mr. Smith, my [5575] colleague over here—was he present when we talked yesterday?

A Yes, sir.

Q When I told you that Mr. Beasley was also around, what did you say?

MR. BLACKBURN: Your Honor, we would OBJECT.

THE COURT: Well, yes, I think you better ask her a more specific question.

MR. SEGAL: All right, Your Honor.

BY MR. SEGAL:

Q Would you describe where you and Mr. Smith and I first met? Was it in a room here in the courthouse?

A Yes, sir.

Q And was there anybody else who was in that room when you and I and Mr. Smith met the first time?

A Well, Beasley came in and you also asked me if I wanted someone there to take notes.

Q Yes.

A And I said, "Yes," and you had someone come in. You also gave me permission to re-read the notes when we were done.

Q All right, let me ask you this: Mr. Beasley came in right after you and I met?

[5576] A Yes, sir.

Q Was that with your approval or disapproval that Mr. Beasley was there?

A A little bit of both.

Q A little bit of both. Did you not want him there?

MR. BLACKBURN: Your Honor, we would OBJECT to this.

THE COURT: Well, OVERRULED.

THE WITNESS: Well, I had been given some misguided information on him and I was sort of—

BY MR. SEGAL:

Q (Interposing) Did you and he talk it over?

A We cleared it up and then I was happy to see him.

Q As far as you were concerned, was Mr. Beasley present as a friend yesterday?

A Yes, sir.

Q Did you also see Jane McCampbell Zillioux yesterday?

A Yes, sir.

Q Did she come in and talk with you?

A Yes, sir.

Q Did you see Red Underhill yesterday?

A Yes, sir.

[5577] Q Did he also talk with you?

A Yes, sir.

Q Did Bill Posey also talk with you yesterday?

A Yes, sir.

Q By the way, was there anybody else who you knew who was a friend of yours present at any of these times?

A My fiance was allowed to come in and sit down.

Q What is his name?

A Ernest Davis.

Q He was sitting right next to you?

A Yes, sir.

Q All right, now, did each of those people I have mentioned to you—Jane and Red and Bill Posey—each tell you what they remembered of their conversations of

the various dates that I have been talking about this morning?

A Yes, sir.

Q And, after they told you what they remembered, did it in any way revive or bring back a memory of what you have said?

A Only pieces of the conversation.

Q Did it revive your memory fully as to [5578] what you said to those persons about the MacDonald murders?

A No, sir.

Q Now, at that time when we were meeting yesterday and talking, do you recall me showing some photographs to you?

A Yes, sir.

Q In fact, we looked at quite a few photographs; didn't we?

A Yes, sir.

Q I want to show you these photos, please, to see whether we are talking about the same photos. They have previously been identified in the record as Government Exhibits G-775, 776, 773, 771.

[5579] BY MR. SEGAL:

Q Do you recall me showing you a group of photographs, of which the four I am about to show you now were part of them? Please take a look those, if you will, Ms. Stoeckley?

A Yes, sir.

MR. SEGAL: For the record, may it be indicated that the photographs I have exhibited to the witness are autopsy photographs, three of them of Kristen MacDonald and one of Colette MacDonald?

BY MR. SEGAL:

Q Now, when you looked at those three photographs of Kristen MacDonald, do you recall what, if anything, you said as far as any recognition of the person depicted there?

A No.

MR. ANDERSON: I could not hear her answer, Your Honor.

THE COURT: I understood her to say "no." Is there another question?

MR. SEGAL: Yes.

BY MR. SEGAL:

Q You are still examining those pictures, Ms. Stoeckley?

A No, sir.

[5580] Q Will you look at the picture that is marked G-771 of Mrs. Colette MacDonald? Do you recall what, if anything, you said when you saw that photograph yesterday?

MR. ANDERSON: OBJECTION.

THE COURT: SUSTAINED.

MR. SEGAL: May I have the basis of the objection, Your Honor, for the ruling?

THE COURT: Yes; you may ask this witness today if she recognizes it. It is not a question of what she told you during some private conference with her.

MR. SEGAL: It is only preliminary foundation, Your Honor.

BY MR. SEGAL:

Q Do you recognize—

THE COURT: (Interposing) What do you say about that picture today?

THE WITNESS: I don't recognize her.

BY MR. SEGAL:

Q All right; let me show you some other pictures. Do you recall looking through several large books of photographs yesterday, such as the one I am holding in my hand?

A Yes, sir.

[5581] Q I want to show you a series of five photographs from one of those books.

MR. SEGAL: For the record, let me indicate I am showing to the witness photographs taken from the crime scene at the MacDonald house prior to removal of the bodies, identified heretofore as Government 59, Government 70, Defendant Exhibit 22, Defendant Exhibit 84, Government Exhibit 145—these photographs having been identified as taken in the bedroom of Kristen MacDonald.

BY MR. SEGAL:

Q Ms. Stoeckley, will you please take a look at these photographs and first of all tell me if they seem familiar as among those you saw yesterday?

A I saw these yesterday.

Q Beg your pardon?

A I did see these yesterday.

Q Does anything in that last group of photos I have just showed you seem familiar to you?

A No, sir.

Q Does the picture of the person in the bed in any way seem familiar to you?

MR. BLACKBURN: Your Honor, we would OBJECT. She has answered the question.

THE COURT: Yes; she said nothing in [5582] any of the photos—was that your answer?

THE WITNESS: Yes, sir.

THE COURT: Nothing seems familiar to you?

(Witness nods affirmatively.)

MR. SEGAL: I need to ask one specific matter that I want her to look at and ask her whether that refreshes any recollection, or has any recollection.

MR. ANDERSON: We OBJECT:

THE COURT: I will let him ask her.

THE WITNESS: No, sir.

BY MR. SEGAL:

Q Let me just ask you about an item in the photos that are marked G-59 and G-145. I want to hold them up, please, if I may, and ask you if you see first of all an item in the foreground here, in the left corner of both of these photographs? Can you see that, Ms. Stoeckley?

A A hobby horse.

Q Beg your pardon?

A A hobby horse.

Q Does that item seem familiar to you in any way?

A No.

Q It does not?

[5583] (Witness nods negatively.)

Q Sometime after February 17, 1970, did you stop using LSD?

A Yes, sir.

Q Was there a specific reason why you did that?

A Only the reason I explained earlier.

Q Was there a reason that had anything to do with the MacDonald murders?

MR. BLACKBURN: Objection.

THE WITNESS: No, sir.

THE COURT: OVERRULED.

BY MR. SEGAL.

Q In February of 1970, did you own a hat of any sort?

A Yes, sir.

Q How would you describe that hat?

A Just an old, floppy hat.

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[5588] Q In 1970, Ms. Stoeckley, was your hair similar to the way it looks today?

A Yes, sir.

Q Was it always the color that it is now?

A Yes, sir.

Q It has been that way for some years?

A Yes, sir.

Q Again, you've got a very quiet voice. I have to ask you to keep it up a little.

Did you ever wear anything over your hair in 1970?

A Only as a joke sometimes.

Q Well, whether it was serious or a joke, did you wear anything over your head?

A Yes, sir.

[5589] Q What was that?

A A blond wig.

Q And what was the length of the hair on the blond wig?

A Just a little bit longer than my own hair.

Q I'm sorry?

A A little bit longer than my own hair.

Q Does that mean about shoulder length?

A Yes, sir.

Q How long had you owned the blond wig?

A About three months, I guess.

Q Did you in the—January, February, 1970, own any boots?

A Several pairs.

Q Did you have both short and long ones?

A Yes, sir.

Q Well, now, when you say "short boot," I guess we should get our definitions right. How far up on the leg did you consider a boot to go before it was short?

A Ankle-high.

Q Did you have any boots at that time that were higher than that?

A Two other pairs. Two other pairs.

Q And how far up your leg did they go?

[5590] A One went up the calf and one went all the way up to the knee.

Q Were each of those boots the kind with the zipper on the side—you could slide into them?

A Both of them had zippers on the inside.

Q What color were each of those boots?

A The ones that went to the thigh were white, and the ones that went to the knee were brown.

Q Do you recall how tall you were in 1970?
A About 5'5".
Q Did you weigh about what you weigh today?
A No.
Q Were you heavier or lighter than that?
A Lighter.
Q What was your weight in 1970, approximately?
A About 115.
Q 115 pounds?
A Uh-huh (yes).
Q I don't mean to pry, but I need to ask you, about what do you weigh now?
A About 138, 140.

(Defendant Exhibit No. 86 was marked for identification.)

BY MR. SEGAL:

Q Let me show you, Ms. Stoeckley, a [5591] photograph marked D-86 for identification, and ask if you recognized this picture?
A Yes, sir.
Q What does this picture show—you've got to keep your voice up, please?
A It is just my picture.
Q Is that a picture of yourself?
A Yes, sir.
Q Do you know when that picture was taken approximately?
A Yes, sir.
Q When was that?
A 1970.
Q Would that be about August of 1970? Does that sound about right?
A Yes, sir.
Q Is there anything unusual about your condition in this photograph when it was taken, or anything about your condition?
A Physical condition, you mean?

Q Well, physical or emotional condition?

A Well, I was definitely on drugs at that time it was taken.

Q I'm sorry. Go ahead—keep your voice up. Let me stand back a little bit. So you were definitely [5592] on drugs at the time that picture was taken?

A Yes, sir.

Q Do you know what drugs you were on at the time that picture was taken?

MR. BLACKBURN: Your Honor, we would OBJECT. She has testified that she was on drugs during this time and which drugs it was.

THE COURT: OVERRULED.

THE WITNESS: Judging from my eyes I'd say some kind of—well, the usual heroin and probably some barbiturates.

BY MR. SEGAL:

Q Who took that photograph if you know?

A Police department.

Q And what police department took that photograph?

A Fayetteville.

Q Fayetteville. Is that connected with an arrest at that time?

A Yes, sir.

MR. SEGAL: May the photograph be published to the jury, Your Honor.

THE COURT: Yes, sir.

(Defendant Exhibit No. 86 was received in evidence.)

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[5998] DIRECT EXAMINATION 11:07 a.m.

(resumed)

THE COURT: Try to keep your voice up so everybody can hear you.

BY MR. SEGAL:

Q Ms. Stoeckley, prior to our recess, I had asked you about a hat that you had owned in 1970; do you recall that?

A Yes, sir.

[5599] Q And can you try to give us a little bit better verbal description of the way it looked?

A It was just an old, floppy, brimless (sic) hat.

Q Let me show you a photograph that has been marked as Defendant Exhibit 87 for identification and ask whether the hat that is depicted in that photograph in some way resembles the hat that you owned in 1970?

A Yes, sir.

(Government Exhibit No. 87 was marked for identification and received in evidence.)

Q It does?

A Yes, sir.

MR. SEGAL: May that be published to the jury, Your Honor?

THE COURT: Yes, sir.

(Exhibit passed among the jury.)

BY MR. SEGAL:

Q Now, on February the 18th of 1970—I want to direct your attention to that date—did you have occasion to give your floppy hat to anyone?

A No, sir.

Q Did you see Detective Beasley on that date—February the 18th, 1970?

[5600] A I'm not sure. I probably did.

Q Did have any occasion in mid-February—after February 17, 1970—to show or give your floppy hat to anyone else, including Detective Beasley?

A I didn't give it away; no.

Q Well, I didn't mean to give it away.

A Well, I wore it all the time.

Q Did you see Detective Beasley on or about the early morning hours of February 18, 1970, at the Hickory Trailer Court?

A Yes, sir.

Q What happened, if anything, at that time involving yourself and Detective Beasley?

A There was a drug bust.

Q Were you taken into custody at that time?

A More or less.

Q Yes?

A Yes, sir.

Q Do you know whether or not you were detained for the CID to meet with you on that date or on a subsequent date?

A I was, but they never showed up so I was released.

Q What date was that that we are talking about—that you were held for the CID?

[5601] A It should have been about the 18th.

Q Now, you were picked up, you say, at the Hickory Trailer Park; is that right?

A Yes, sir.

Q And that is located where?

A In Spring Lake.

Q Spring Lake is near Fayetteville; is that right?

A Yes, sir.

Q Just a few miles outside of Fayetteville?

A Yes, sir.

Q You were taken down to the police station in Fayetteville?

A Yes, sir.

Q Did Detective Beasley take custody of you at some time there?

A Yes, sir.

Q Do you know why the CID was called in connection with an arrest that had been made in Spring Lake which was not on military property?

A It involved several Fort Bragg soldiers.

[5602] BY MR. SEGAL:

Q Do you know whether or not at that time you were being held for investigation in connection with possible involvement in the MacDonald murders?

A Only what I assumed.

Q You only assumed that?

(Witness nods affirmatively.)

Q Let me ask you—how long did you continue to own the floppy hat after February 17th, 1970?

A Maybe six or seven months. And it was stolen and I got another one.

Q You say, six or seven months, and then it was stolen?

A I started to wear it less and less frequently.

Q You started to wear it less and less frequently after February 17th, 1970?

A Yes, sir.

Q And for what reason was that?

A Because of the connection that people were coming up to me and assuming that, since I wore the floppy hat, I was the girl in question. And I stopped wearing the hat.

Q What about your blond wig? Did you wear that very much after February 17, 1970?

[5603] A Not at all; I got rid of it.

Q What's that?

A I got rid of the blond wig.

Q You got rid of the blond wig? What date did you get rid of the blond wig?

A 19th or 20th—somewhere around there.

Q 19th or 20th of February, 1970; is that right?

(Witness nods affirmatively.)

Q It is fair to say you got rid of it, again, because it connected you possibly with the MacDonald murders?

A Yes.

MR. BLACKBURN: OBJECTION.

MR. MURTAGH: OBJECTION.
THE COURT: SUSTAINED.

BY MR. SEGAL:

Q What was the reason you got rid of it?
A Because it connected me with the murder.
Q What about your boots? What happened to them?
A The heel came off of one of them, and I just got rid of them.
Q Got what?
A The heel came off and I got rid of the boots.
[5604] Q Didn't bother to fix it; right?
A No.
Q What pair of boots did the heel come off?
A The white ones.
Q The white ones? Where did you get rid of them?
A I threw the boots in the trash can and I burned the wig.
Q Did that happen around the 18th or 19th of February that you got rid of them?
A Yes, sir.
Q Where is it that you broke the heel on those boots?
A I am not sure. I just put them on one morning and found out the heel was broken. I don't know where I broke it at.
Q This arrest that you were taken in custody for on the 18th of February—did any CID Agents show up to talk to you about that—whatever matter it was that you were being held in custody for?
MR. BLACKBURN: OBJECTION.
THE WITNESS: Not at that time.

BY MR. SEGAL:

Q Not at that time? At any time in February, 1970, did any CID Agent come up to you and talk to you [5605] about it?
A It was either February or March. I am not sure. I was in jail, and two came down to see me.

Q You are talking about the drug arrest, or some other matter?

A It was a drug arrest.

Q They did not talk to you anything about the MacDonald case, did they?

A That was what they came and talked to me about.

Q I am sorry: I misunderstood you. They came and talked to you about what, then?

A About the MacDonald murders.

Q Did you talk to them about that?

A Yes, sir.

Q Do you know what you told them at that time?

A No, sir.

Q Do you have any recollection at all about what you said at that time?

A No, sir. I just went through the same thing about not knowing where I was that night and that was all I could tell them.

Q Ms. Stoeckley, do you know what your blood type is?

A Not offhand.

[5606] Q Not offhand? I want to ask you one question slightly out of order. I neglected to get to it before, but you told us you went to Fort Bragg a number of times because you went to Womack Army Hospital; is that right?

A Yes, sir.

Q Did you also visit other areas at Fort Bragg?

A On occasion.

Q Do you know any shopping center at Fort Bragg—any shopping area at Fort Bragg?

A Yes, sir.

Q Where is the shopping area located?

A I used to stop at one on my way to Womack sometimes, or going back home.

Q Which one was that?

A Melony Village.

Q Melony Village? Do you know what the name of the streets were where that intersected?

A One is Honeycutt.

Q Now, to your knowledge, is there a picture that now exists that shows the way you looked in 1970 with the blond wig on, or with the blond wig and your floppy hat on?

A I never had a picture taken with that wig on.

[5607] MR. SEGAL: At this time, I propose to show her an exhibit.

MR. BLACKBURN: Your Honor, we would OBJECT to this.

MR. SEGAL: That figures.

MR. MURTAGH: We OBJECT to that comment, Your Honor.

THE COURT: OVERRULED.

BY MR. SEGAL:

Q I want to show you an exhibit which is marked D-89 for identification.

(Defendant Exhibit 89 was marked for identification.)

I would like for you to take a look at this exhibit, which I think it is fair to describe to you as an artist's representation. Does this exhibit, first of all, appear to be a representation—a fair representation, as an artist might view it—of the way you would look in February of 1970 or January, 1970, with your hat and wig on?

A Not completely; no.

Q All right; in what way would you think it was different—it would be different to more correctly reflect the way you look?

A The chin is not that square.

[5608] Q You say the chin—your actual chin—is, you don't think, quite as square as the artist has shown it?

(Witness nods negatively.)

Q You have to say "yes" or "no," please.

A No, sir.

Q Anything else?

A The hat was square at the top, instead of rounded like this one.

Q A little squarer at the top? Would that be correct? Or a lot squarer? I don't mean to give you the value.

A Just a little bit.

Q A little squarer? Aside from those two items does that picture fairly represent the way you looked if you wore your floppy hat and wig at that time?

A Yes, sir.

MR. SEGAL: May it be published to the jury, Your Honor?

MR. ANDERSON: OBJECTION.

MR. BLACKBURN: OBJECTION.

THE COURT: Well, I suppose that it is objectionable, in that this witness says that if you are trying to show how she would have looked, I don't get the impression that this witness agrees that that is the way she would have looked. She says the hat is different and [5609] the chin is different.

MR. SEGAL: Well, Your Honor, the statement about the hat as slightly squarer—we can correct that—

THE COURT: (Interposing) Well, now, the word "slightly squarer" was your word.

MR. SEGAL: I asked her if that was her words. Did she accept that, or was I wrong? Let me put it back to you.

THE COURT: Take a look at this photograph (sic) and see whether or not you think that it looks like you would have looked with your hat on and your chin at that time?

THE WITNESS: My hat on and my chin?

THE COURT: Yeah; your hat on and your chin. It is a fair representation of how you would have looked at that time? Just say "yes" or "no."

THE WITNESS: Yes, sir.

THE COURT: All right, now; I will let you proceed.

MR. SEGAL: If Your Honor please, I would like to publish it in fairness with the square hat, the original—the squared hat in the drawing here.

THE COURT: All right.

[5610] (Defendant Exhibit 89 was received in evidence.)

(Exhibit passed among the jury.)

[5611] BY MR. SEGAL:

Q After you were interviewed in Nashville, Tennessee, in 1971, when did you have occasion to leave there—what year or month, if you recall?

A I am not sure of the month. It was sometime I think in late '73 or early '74.

Q At that time was anyone contacting you or had anyone contacted you about the MacDonald case again?

A While I was in Nashville?

Q Yes.

A Yes, sir.

Q Who was that?

A Detective Beasley and Dick Mahon from the CID.

Q We know about an early contact, you know, in 1971. Are you talking about a second time he came to see you?

A No, sir.

Q Did your leaving Nashville at that time have anything to do with the fact that there was any investigation pending in the MacDonald case?

A No, sir.

Q Where have you lived? Just tell us the cities where you have lived since that time until you were brought here the other day?

[5612] A Well, I went back to Fayetteville; Cincinatti, Ohio; Daytona Beach; Deland, Florida; Greenville, South Carolina; Columbia, South Carolina; up to Wahalla, South Carolina. That's where I was picked up.

Q And you told us before that you didn't have any permanent address during that period of time after you left Nashville?

A No, I never stayed in those places.

Q Did you know that anyone was trying to locate you to interview you in connection with the MacDonald case?

A Yes, sir.

Q And what if anything did you do when you found out that they were looking to interview you?

A I just didn't want to be bothered so I moved again.

Q How many times did you move to avoid being interviewed?

A About three times.

Q Were you present in that house in Wahalla last week, when a woman lawyer came to that house in the evening?

A When a woman lawyer?

Q Yes, a black woman?

[5613] A No, sir.

Q You were not, all right.

I want to show you some photographs that you may have seen yesterday also.

MR. SEGAL: They are marked for the record Government Exhibits 23, 24, and 75? These have been previously described in this case as being some of the photos taken of the MacDonald living room.

I ask you to look at all three of them first please.

(Witness complies.)

BY MR. SEGAL:

Q Have you done that, Ms. Stoeckley?

A Yes, sir.

Q I ask you to give particular attention, if you will, please, to the photograph which is marked G-75, which shows sofa, coffee table, and part of the hallway and some

clothing in the MacDonald house. Would you look at that, please?

Do you have any reason to believe that you have seen that scene before prior to being shown the photographs yesterday and today?

A No, sir.

Q Do you have any reason to believe that you were ever standing in that place?

[5614] A No, sir.

MR. SEGAL: May we approach the bench, Your Honor?

BENCH CONFERENCE

MR. SEGAL: At this time, Your Honor, I ask for leave of Court to take this witness as on cross, because she is a surprise and hostile witness.

I represent to the Court that during the interviews with me and with other persons present she stated that when she looked at the picture she had a recollection of standing over a body holding a candle, seeing a man's body on the floor.

I also may say, Your Honor, we are now down to the bottom five or six critical things that she revealed yesterday. I have a feeling, based upon her answer to this one now, that when and if I ask her in direct fashion, that I may get negative answers.

I had no anticipation of that, because yesterday throughout the time that she made these statements, we accepted them, did not expect contrary.

We have not had any different statements from her and we feel that we are entitled to the plea of surprise as well as the fact, I think, at this point—the extent of her hostile relationship not in terms [5615] of manner but the hostility of her interest to the Defendant.

I am going to tell Your Honor the other things that she has said. Would that be appropriate now to expedite, or should we do it one at a time?

THE COURT: Well, if it will save any trips up here maybe you should tell us now.

MR. SEGAL: She has already actually said something, and I did not want to raise a surprise question. I want to do it all at one time. The photograph that I showed her of the bedroom of Kristen MacDonald: during the interview yesterday, she stated that she remembered riding the rocking horse when she looked at that picture.

She also stated yesterday she remembered standing at the end of the sofa holding a candle. She also said when she saw the body of Kristen MacDonald—the one when she was clothed, with the baby bottle—that that picture looked familiar to her.

That scene looked familiar. She also said when she was shown the photograph of Colette MacDonald—the same one I showed her today—that she said that the face in that picture looked familiar, except that the chin was broken and made it a little hard.

She also stated—and I'm going to get to it—[5616] she's gotten to the point where she does not sound like she is going to cooperate further—that she was standing of the corner of Honeycutt across from Melony Village.

She has a recollection of standing there during the early morning hours of February 17th, 1970. She further stated yesterday, and I intend to ask her now, that she has a recollection of standing outside the house looking at her hands and saying, "My God, the blood; oh my God, the blood."

She said that took place February 17, 1970. There are witnesses to each of these things. I must say, Your Honor, there were persons present the entire time this took place.

I intend to now ask her directly each of these questions. If she refuses or denies her statements I ask for leave to confront her:

"Did you not say that yesterday when you were confronted with these photos?"

If she persists in denying it we will of course impeach her as we have the right to impeach her under the rules.

Although we have called her as a witness, there are rules that permit that to be done.

When I am done with that I intend to turn her over for cross-examination.

[5617] MR. BLACKBURN: Of course, I was not there when she talked with the Defense yesterday, but in her interview with the Government none of those statements were made. She specifically told us—

THE COURT: (Interposing) Did you ask her any?

MR. BLACKBURN: Yes, sir. She specifically told us that she had been shown the photographs and we asked her, "Did you recognize any of the scenes in those photographs?"

The answer was no. I asked her, "Have you ever been in that house?" She said no. I said, "Do you know anything about that?" "No." "Who do you think did it?" "Dr. MacDonald." You know, it just went one right after the other.

I discussed—I told Mr. Smith last night what she told us. I was under the impression to this very moment that what she told us was essentially what she told them.

It is difficult for me—you know—I am not saying that they are not saying what she said. I just don't know which way it is, because she has not indicated anything to the Government.

MR. SMITH: Judge, here I think is where we are. Generally, she said to us the same thing [5618] and that is, "I don't remember." But in two or three or four instances—whatever the list would reveal—she says something which would give an interesting insight into her mind.

I would submit that we have a right to cross her on those; if she denies them then they have a right to impeach her on the statements or show that she did not say anything like that.

THE COURT: I am not going to cross the hostility thing until there is a reason shown to indicate it; but I am going to ask the witness a question myself.

(Bench conference terminated.)

THE COURT: Ms. Stoeckley, how long did you spend yesterday talking to Defense counsel in this case—Mr. Segal, Mr. Smith, and others?

THE WITNESS: About three and a half to four hours.

THE COURT: Did you thereafter talk to the Government's attorneys?

THE WITNESS: Yes, sir.

THE COURT: Had you ever seen them and talked to them before?

THE WITNESS: No, sir. One member I had before.

[5619] THE COURT: Now, did you tell both sides the same story?

THE WITNESS: As far as I know, yes, sir.

THE COURT: All right, that was the question I was going to ask.

BENCH CONFERENCE

MR. SEGAL: The point—each of the things that I am representing to the court were said in the presence of other witnesses. It is not a question of my saying it. It is not going to be counsel and the witness.

I intend to fully call those people.

THE COURT: I am confident of that. You would not stand here and tell me that she said one thing unless she said it.

MR. SEGAL: And not be able to back it up.

THE COURT: But I tell you what, if Blackburn tells me that she told him that, I am going to say that too. I don't know where you are going with this kind of testimony, but go on. I am not going to, on the 25th day of the trial—I ain't going to stop now just because it don't make any sense to me.

[5620] MR. BLACKBURN: Judge, does that mean that he can ask as on cross?

THE COURT: No, I have not said that. I said I would make that decision when we come to it.

(Bench conference terminated.)

[5621] THE COURT: Any further questions of this witness?

MR. SEGAL: Yes, Your Honor—a few basic matters. We are getting to the end of this.

BY MR. SEGAL:

Q Ms. Stoeckley, I asked you before to take a look at some photographs of what we have had identified here at the trial as the body of Kristen MacDonald—Government 60, 70, 59 and 84. Do you recall these photographs?

A Yes, sir.

Q When I asked you before whether they seemed familiar to you, do you recall saying that the scene did not seem familiar to you as your answer today in court?

A Yes, sir.

Q Do you not recall at this time that yesterday, as you were sitting in the room outside the courtroom, when you were shown—

MR. BLACKBURN: (Interposing) Your Honor, excuse me. We would OBJECT to this type of question.

THE COURT: Let me just ask the question. Were you asked that same question by this lawyer yesterday?

THE WITNESS: Yes, sir.

THE COURT: What did you say then?

[5622] THE WITNESS: Well, I studied the picture for a while, and I don't know. I just don't recognize it.

THE COURT: Is that what you told him, or did you tell him something different?

THE WITNESS: Well, the younger girl just looked like—I don't know. She looked like a little girl I had seen before. Thats all.

BY MR. SEGAL:

Q Do you recall talking, when I was not in the room, in the presence of Jane, about those pictures?

A I was just trying to see if I had ever seen any members of the family before.

Q I understand that, Ms. Stoeckley, but I am asking you, though—

A (Interposing) I said I could have seen Colette somewhere on Post.

Q Let's back up a second, though, please. We've got two subjects together and I need to do one at a time. Do you recall yesterday that when I was not asking you any questions, but you were talking with Jane Zillioux, the lady from Nashville—do you recall that when you sat there looking at that picture you said—

MR. BLACKBURN: Your Honor, we would OBJECT.

[5623] THE COURT: Yes; I will SUSTAIN that.

MR. SEGAL: Your Honor, there is a plea of surprise in this matter in regard to the answer. I think we are entitled to present the question in this form—

THE COURT: (Interposing) Let me ask her one more time.

MR. SEGAL: Yes, Your Honor.

THE COURT: Have you told anybody else when this lawyer was not there any different story about whether or not you recognized these pictures or anybody in them?

THE WITNESS: What I just said about Colette and the youngest girl.

THE COURT: He wants to know, though, have you looked at these pictures and told somebody else that you did, in fact, recognize this scene, or that you had been there, or something of that nature?

THE WITNESS: Not that scene.

BY MR. SEGAL:

Q Let me hand the group of photos back to you again. Ms. Stoeckley, do you recall, just as you are now, sitting on the stand, looking at those photos—do you recall staring at those photos at some length when Jane

Zillioux was sitting just about next to you in that [5624] room in this building?

A I mentioned something about the rocking horse.

Q Yes; all right, will you tell us about the rocking horse—what you recall saying about it?

A I made some comment about it being broken or something.

Q Does the picture show anything about a broken rocking horse?

A I can't tell if it is broken or not. It looks like it is.

Q Beg your pardon?

A It looks like it is broken.

Q It looks like it is broken? Let's take a look, and if you can show us, perhaps—may I hold up this photo, please—the photo that is marked G-59? As a matter of fact, we even have a larger one of this. May we use that, please? Well, in this cornucopia of photos, we are having a little trouble finding it. Mr. Murtagh, do you know where it is?

MR. MURTAGH: No; I don't.

MR. SEGAL: You wouldn't know where it is; all right.

(Pause.)

BY MR. SEGAL:

[5625] Q Ms. Stoeckley, I am going to put here on the easel, so that the members of the jury can also look with you the first of two photos. One is an enlargement marked G-982; then the other is marked G-145(a). Can I impose upon you, please, to perhaps step down here next to the witness stand, look at the photograph and tell me, how does it appear to be broken in any fashion?

A The part going to the spring.

Q That looks broken to you; is that right?

(Witness nods affirmatively.)

Q Now, let me show you the photograph that is marked 145(a). You also see in the lower left-hand corner the rocking horse; is that right?

A Yes, sir.

Q Does that look broken to you there also?

A No.

MR. SEGAL: You may go back to the stand, please.

[5626] BY MR. SEGAL:

Q Now, do you recall what you first said when you first observed that photo yesterday in the book that I showed you—the black one?

MR. ANDERSON: OBJECTION.

THE COURT: OVERRULED.

BY MR. SEGAL:

Q Please, Ms. Stoeckley, what did you say about the rocking horse?

A That was the first thing I muttered is that it was broken, and when you asked me what I said, I just said nothing.

Q Beg your pardon?

A You asked me what I said, and I said nothing and shrugged it off.

Q Did you say anything at all about your having touched or used that rocking horse at the time?

MR. ANDERSON: OBJECTION.

THE COURT: OVERRULED.

THE WITNESS: Not at that time; no.

BY MR. SEGAL:

Q At what time?

A I don't even remember saying that yesterday at all.

Q At what time did you ever say anything [5627] about touching the broken rocking horse?

MR. BLACKBURN: Your Honor, we OBJECT.

THE COURT: I SUSTAIN that.

MR. SEGAL: I thought the witness said, "Not at that time."

BY MR. SEGAL:

Q What did you mean, Ms. Stoeckley, when you said "Not at that time"?

A Just that I didn't say it yesterday; no.

Q Did you ever say it?

A Not that I recall.

Q Ms. Stoeckley, do you have a recollection of standing or of ever being outside of 544 Castle Drive late at night?

MR. BLACKBURN: Your Honor, we OBJECT.

THE COURT: OVERRULED.

BY MR. SEGAL:

Q Do you have such a recollection?

A No, sir.

Q Do you have a recollection of whether conditions in the vicinity of 544 Castle Drive on February 17, 1970?

A No, sir.

MR. SEGAL: If Your Honor pleases, I plead surprise for the reasons I have already stated.

[5628] THE COURT: Ask your question.

BY MR. SEGAL:

Q Did you not say yesterday when you were sitting in the witness room that you recalled standing outside on February 17th in the early morning hours in the rain and looking at your hand?

MR. ANDERSON: OBJECTION.

THE COURT: OVERRULED.

BY MR. SEGAL:

Q Do you not recall saying that?

A No, sir.

Q Do you recall looking at your hands at any time on February the 17th, 1970, in the early morning hours?

A Not on that day; no.

Q Well, I am concerned about that early morning.

A No, sir.

Q Did you not say yesterday when you were in the witness room that you had a recollection of looking at your hands and seeing something on them? Do you recall that?

MR. ANDERSON: OBJECTION.

THE COURT: OVERRULED.

BY MR. SEGAL:

[5629] Q What's your answer, Ms. Stoeckley?

A No, sir.

Q Are you saying you did not say that yesterday?

A I don't remember saying it; no.

Q Do you recall saying it to Jane Zillioux? Do you want me to bring her in?

MR. BLACKBURN: OBJECTION.

MR. MURTAGH: OBJECTION.

MR. SEGAL: It is a question of recognition of who she was talking to. It ought to be an issue here.

THE COURT: Well, I believe the witness has indicated that she talked to somebody named Jane. I don't know what that last name is. I can't hear it. Did you talk to somebody named Jane yesterday?

THE WITNESS: Yes, sir.

THE COURT: What did you tell her about looking at your hands?

THE WITNESS: I don't remember saying anything about my hands.

THE COURT: All right.

BY MR. SEGAL:

Q Did you say anything to Mr. Beasley about [5630] it?

A No, sir.

Q To Mr. Underhill yesterday?

A No, sir.

Q Were you on the corner of Honeycutt and Lucas near Melony Village on the morning of February 17, 1970?

A Not that I know of.

Q Do you recall being asked about that yesterday?

A Yes, sir.

Q Do you recall what you said about that yesterday?

A I said I had been on that corner before, but I couldn't have been there that morning.

Q How do you know that you couldn't have been there on that morning if you don't know where you were?

MR. BLACKBURN: OBJECTION.

THE COURT: I will SUSTAIN your objection. You can't argue with this witness.

BY MR. SEGAL:

Q All I want to know is: I thought you told us before that you did not know where you were between midnight and 4:35 on February 17; that was [5631] your testimony; wasn't it?

A That's true.

Q Can you say for certain that you were not on the corner of Melony (sic) and Honeycutt that morning?

A No; I can't.

Q Now, I asked you a few minutes ago to look at the pictures—

MR. SEGAL: Your Honor, indulge me for a second.

(Pause.)

BY MR. SEGAL:

Q Ms. Stoeckley, I asked you a few minutes ago to look at those pictures of what we now know to be the living room of the MacDonald house; do you recall that?

A Yes, sir.

Q I particularly asked you to look at one photograph which depicts both the sofa and the coffee table—that would be G-75; do you recall that?

A Yes, sir.

Q Was that not one of the photographs that I showed you yesterday in the books of photographs?

A Yes, sir.

Q Do you recall now what you said about [5632] what knowledge or do you recall what you said about having been there or not been there back on February 17, 1970?

A I said the sofa looked familiar, but I've seen a lot of sofas that looked like that.

Q Do you recall saying something about seeing a body there?

A I said there was nothing on there.

Q Do you recall yesterday saying in the witness room you recalled seeing a body there on the sofa or the floor when you were holding a candle; do you recall making that statement?

A That was only like in a dream or something like that.

Q Well, first of all, let's find out: do you recall making that statement? We need to know whether we are talking about the same thing.

MR. BLACKBURN: Your Honor, I think we would OBJECT. I think she has answered that.

THE COURT: Yes, I will SUSTAIN the objection. Ask her another question.

BY MR. SEGAL:

Q Do you recall the day that the MacDonald family funerals were taking place at Fayetteville at Fort Bragg, North Carolina?

[5633] A More or less; yeah.

Q What color clothing did you put on—wait a minute. Before I get to that—had you heard about the

funeral on the radio or read in the newspaper about the funeral that was taking place?

A I wasn't really paying attention to it; no.

Q You were not. Did you know what was happening, though—what was taking place at Fort Bragg? Were you aware of that?

A No; I wasn't aware of it.

Q Well, let me ask you: the week after—during the week of February 17th through February 21st of 1970, did you have occasion to get a floral wreath from a florist?

A Yes, sir; several of them.

Q Several of them. They were funeral wreaths; were they not?

A Yes, sir.

Q Where did you set these funeral wreaths up?

A Along a fence between mine and Mr. Posey's house.

Q As a matter of fact, what color clothing were you wearing on the day that you set up these [5634] funeral wreaths outside your house?

A Black.

Q Black. Funeral black?

A No; I always wore black or purple.

Q As a matter of fact, what was your usual color of clothes that you wore?

A Black or purple.

Q A purple vest, a purple skirt—was that your usual clothing?

A (No response.)

Q How many funeral wreaths did you have outside your house on that day?

A I don't know—five, six.

Q Why did you set up funeral wreaths during that week after the MacDonald family murders?

A It wasn't just at that time. There was a florist up the street from us, and they used to throw them out all the time, and they were good flowers and stuff, and we used to just pick them up and take them home.

Q It was just a coincidence you are saying?
A Probably; yes.
Q Now, I would like to know something about the people you were associating with in 1970; all right?
[5635] A Yes, sir.
Q Did you have a friend by the name of Allen?
A Allen?
Q Yes.
A I may have at that time.

[5636] BY MR. SEGAL:

Q Well, let me put it to you this way: you had a number of acquaintances in the Haymont Community; is that right?
A Yes, sir.
Q Were there among your acquaintances any persons that you believe, based upon your knowledge of them, who were capable of doing the kinds of things you knew happened to the MacDonald family?
MR. BLACKBURN: OBJECTION.
MR. ANDERSON: OBJECTION.
THE COURT: SUSTAINED.
MR. SEGAL: Just one second, Your Honor.

(Pause.)

BY MR. SEGAL:

Q Didn't you know Allen Mazzarole in 1970?
MR. BLACKBURN: OBJECTION, Your Honor.
THE COURT: OVERRULED.

BY MR. SEGAL:

Q Did you know him?
A Yes, sir.
Q How would you describe his appearance?
A Very clean-cut, well-dressed.

Q A nice-looking man?

[5637] A Yes.

Q About approximately what age?

A About 24 or 25.

Q In what connection did you know Allen Mazzarole?

A I used to deal for him.

Q You used to do what?

A I used to deal for him.

Q You mean, you worked for him in the selling of drugs?

A Yes, sir.

Q Did you also have a personal relationship with Allen Mazzarole?

A Yes, sir.

Q Was Allen Mazzarole a man—well, do you know who Allen Mazzarole worked for?

A He was in the Army.

Q He was in the Army at the time?

(Witness nods affirmatively.)

Q What kind—what was his connection with the drugs that you were dealing? Did he supply them to you?

A Yes, sir.

Q What kind of drugs were they?

A Usually LSD.

Q Was Mr. Mazzelrole engaged in transporting [5638] drugs?

A Yes, sir.

Q Transported them from where to where?

A I don't know from where, but I got them.

Q Got them off of Fort Bragg?

A (Witness nods negatively) No.

Q Was there any quantity of drugs you were handling at that time coming from soldiers who were arriving from Vietnam?

A Through him?

Q Not necessarily through him, but generally speaking at that time?

A Yes, sir.

Q Did Allen Mazzarole ever strike or do violence to you?

MR. BLACKBURN: OBJECTION, Your Honor.

MR. SEGAL: I think we have a right to show the nature of her acquaintances, given the context of this total case and the facts we have, Your Honor.

MR. BLACKBURN: Your Honor, may we approach the Bench?

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[5641] BY MR. SEGAL:

Q During 1969 and 1970, Ms. Stoeckley, were you ever beaten up by other members of the groups of people [5642] you dealt with and related with in Fayetteville?

A No, sir.

Q Have you suffered other injuries since that time from people that you have been dealing with and working with in drugs?

A Yes, sir.

Q Your present injury now—your arm injury—is that a result of a beating someone gave you with a steel bar recently?

A Yes, sir.

Q Was that about drugs, too?

A Yes, sir.

MR. SEGAL: I have no further questions.

THE COURT: Any cross-examination?

MR. BLACKBURN: Yes, sir; I believe a few questions.

THE COURT: All right, sir.

CROSS-EXAMINATION 11:57 a.m.

BY MR. BLACKBURN:

Q Ms. Stoeckley, directing your attention to, I guess, the 16th or 17th of February, at 12:00 midnight, I believe you testified on direct examination you were standing in your driveway; is that correct?

[5643] A Yes, sir.

Q Where was your house?
A Clark Street.
Q You were with Greg Mitchell?
A Yes, sir.
Q How long did you stand in the driveway with him? Do you recall?
A Not really.
Q I'm sorry?
A Not really; I don't know how long it was.
Q He gave you a hit of mescaline, which you took at that time?
A Yes, sir.
Q Now, how far is Clark Street from Fort Bragg, if you know?
A I don't know how many miles. I would say about 20 minutes away.
Q About 20 minutes away?
A Yes, sir.
Q Let me hand you Defendant Exhibit Number 80 and ask you to take a look at it?

(Witness complies.)

Q Have you had a chance to look at it?
A Yes, sir.
Q Would it be fair to say that at 12:00 [5644] midnight on the 16th of February, 1970, you were not in that location?
A Yes, sir.
Q You were on Clark Street in your driveway?
A Yes, sir.

[5645] BY MR. BLACKBURN:

Q Now, you have testified that you had a blond wig; is that correct?
A Yes, sir.
Q Where did you usually keep the blond wig?
A In a closet in my apartment.

Q On Clark Street?

A Yes, sir.

Q Did you wear it very frequently?

A Infrequently.

Q You wore it sort of as a joke as I understand you?

A Yes, sir.

Q When you were talking with Greg Mitchell in the driveway, do you recall whether or not you had the blond wig on or off?

A I did not have it on. He did not like it.

Q He didn't like it? And, if you didn't have it on, it would be in the closet; is that correct?

A Yes, sir.

Q I believe you testified that you had two or three pairs of boots?

A Yes, sir.

Q You wore those frequently?

A When I wore shoes, that is what I wore—was [5646] the boots.

Q You don't recall which pair of boots you had on that night; do you?

A No, sir.

Q Now, the ankle boots that I think you said you had, what color were they?

A Black.

Q Black?

A Yes, sir.

Q Did they zip up or did they lace up or what?

A The black ones were just slip on and then they buckled around the ankle.

Q It is fair to say that you just don't know where you were between 12:00 o'clock midnight and about 4:30 or 5:00 o'clock the next morning; is that correct?

A Yes, sir.

Q Directing your attention to that photograph and assuming for a moment, if you will, that the MacDonald apartment is this one right here (indicating), to your

own personal knowledge, Ms. Stoeckley, have you ever been inside the MacDonald apartment before?

A No, sir.

Q At any time?

A Not that type; no, sir.

Q I am sorry?

[5647] A Not that type of apartment; no, sir.

Q It is fair then to say that it is your testimony that to your own personal knowledge, you have never been in that particular apartment at any time?

A Yes, sir.

Q When was the first time you have seen Dr. MacDonald?

A To my knowledge, this morning.

Q This morning?

(Witness nods affirmatively.)

Q It is the first time to your knowledge that you have ever seen him; is that correct?

A Yes, sir.

Q Let me show you this picture of Kristen MacDonald again. Do you need to look at it again?

A No. I have got one.

Q You have got one, okay. Besides seeing that scene in those photographs, to your own knowledge, when was the first time you have ever seen that scene?

A Yesterday.

Q And how did you see it?

A In the pictures.

Q You were shown a number of photographs yesterday; were you not?

A Yes, sir.

[5648] Q And those photographs purported to be the crime scene of the MacDonald apartment; is that true?

A Yes, sir.

Q Do you recall ever seeing any of those scenes prior to yesterday?

A Not these particular scenes; no, sir.

Q Now, you testified that the little girl in that bed—you had seen a little girl like that; is that your testimony?

A Yes, sir.

Q Where might you have seen such a little girl?

A I worked a lot with children. I could have seen one like that anywhere.

Q I believe you testified that you might have seen Colette on post; is that correct?

A Yes, sir.

Q To your own knowledge, did you participate in the killings of the MacDonald family?

A No, sir.

Q How do you feel towards children?

A I love children.

Q Of your own personal knowledge, did you kill Colette MacDonald?

[5649] A No, sir.

Q How about Kristen?

A No, sir.

Q How about Kimberly?

A No, sir.

Q Did you try to kill Dr. MacDonald?

A No, sir.

Q Do you know who did?

A No, sir.

Q Do you recall ever being in the MacDonald apartment carrying a candle?

A No, sir.

Q Now, I believe you testified on Direct that you have been through Corregidor Courts before; is that correct?

A I cut through there quite a bit.

Q That was sometimes on the way to Womack?

A Either Womack or over to the Officers' Club or anything. I used to take Extension Courses at the college over there, too, and cut through there.

Q That would have been prior to 1970; is that correct?

A Yes, sir.

Q Did you ever have occasion that you can specifically recall to go on Castle Drive by the [5650] MacDonald apartment?

A Not until after the murders.

Q Not until after the murders? Well, how long after —do you remember?

A About a year later.

Q About a year later? Why did you go back, if you recall?

A Just to see if anything would look familiar or jolt something in my memory or something.

Q To see if anything looked familiar? Did it?

A No, sir.

Q Did it jolt anything in your memory?

A No, sir.

Q Now, after the 17th of February, 1970, I believe you testified that you were arrested or picked up or questioned concerning this matter; is that correct?

A Yes, sir.

Q Did your picture ever appear in the paper in the Fayetteville newspaper to your knowledge?

A I don't think my picture did; no, sir.

Q Has your picture ever been in the paper to your knowledge?

A Not until yesterday.

Q How long did you live in Fayetteville after [5651] the murders?

A About a year.

Q About a year? Were you questioned quite a bit concerning the MacDonald murders after they occurred?

A I wasn't the only one.

Q I don't mean to imply that you were, but were you personally questioned?

A Yes, sir.

Q Were you ever hassled by the police concerning this situation?

A The City Police; yes, sir.

Q Is it fair then to say that in your opinion the City Police of Fayetteville hassled you about this; is that correct?

A Yes, sir.

Q You testified that you got rid of the blond wig; is that right?

A Yes, sir.

Q Tell us again why you did that?

A Well, I already had people coming up to me and making comments concerning the murders and everything. I just wanted to get rid of anything that might look like I had anything to do with it.

Q That was to keep you from being hassled by [5652] the police; isn't it?

A Yes.

MR. SEGAL: That is what she said. It is OBJECTED TO, Your Honor.

BY MR. BLACKBURN:

Q I am sorry—what did you say?

A Yes.

THE COURT: I think she had answered the question, too, but we have a way of doing everything in duplicate, so I will let him ask it twice.

MR. SEGAL: All right, Your Honor.

BY MR. BLACKBURN:

Q For the second time, what was your answer?

A What was the question?

Q I take it then that at some occasion, you got rid of the hat because you felt you were being hassled by the police; is that correct—I mean the wig?

A The wig; yes.

Q Now, is it a fair statement to say that what you know of the MacDonald killings is a result of what you have been told by somebody else?

A As far as I know.

Q Let me ask you this question: the fact that you did not know where you were for the five hours or four and a half hours from 12:00 until 5:00 o'clock [5653] that morning and the constant comments that you testified that you got from other people concerning the murders, did that cause you to have some concern yourself?

A Yes, sir.

Q In other words, you did not have an alibi for where you were; did you?

A No, sir.

Q Did you ever wear gloves very often?

A No, sir.

Q Did you ever wear gloves at all?

A Very rarely. It had to be pretty cold.

Q Do you know what the weather was like at about midnight or do you recall?

A No.

Q I am sorry?

A Not really.

Q You don't recall if it was raining or not?

A No. As far as I know, it wasnt' raining.

Q What about the weather at about 4:30 or 5:00 that morning—do you recall the weather at that time?

A I didn't pay that much attention; no, I don't remember.

Q When was the first time on the 17th of [5654] February, 1970, that you heard of the MacDonald killings?

A After I had been in my apartment for about 30 minutes.

Q How did you hear?

A There was a news bulletin on the radio.

Q That was the first time you had heard about it?

A Yes, sir.

Q You testified that you were into witchcraft; is that correct?

A Yes, sir.

Q And there were high priestesses—were you a high priestess?

A There weren't any as far as I knew. There were no other—well, I wasn't a witch anyway. There wasn't anyone interested in witchcraft in that area.

Q I am sorry. You will have to speak up.

A There wasn't anyone interested in witchcraft in that area where I lived.

[5655] BY MR. BLACKBURN:

Q Is it fair to say you were reading about witchcraft?

A Right.

Q But you were not a witch yourself?

A No.

Q Did you ever wear white sheets or white robes around?

A No.

Q You never wore choir robes or anything like that?

A No.

Q You spoke of the term "pig," talked about pigs; and I assume you talked about that frequently or used that term frequently?

(Witness nods affirmatively)

Q Who did you refer to as pigs in 1970?

(Witness looks at the Court.)

THE COURT: Does that answer your question?

MR. SEGAL: We OBJECT, Your Honor.

MR. MURTAGH: We were surprised.

MR. BLACKBURN: Your Honor, that was a surprise answer.

THE WITNESS: I did not mean that. That [5656] wasn't towards you.

THE COURT: She is trying to retract it now, but it is recorded for all history.

MR. BLACKBURN: I think she should be given every opportunity to retract, if that is her answer.

THE WITNESS: It is the law enforcement—

THE COURT: (Interposing) All right, she is going to answer your question now. Go ahead.

THE WITNESS: Any law enforcement agent.

BY MR. BLACKBURN:

Q In other words, you called the police "pigs"?

A Right.

Q You didn't think of children as being pigs?

A No.

Q Or ladies as pigs?

A No.

Q You didn't think of Colette, Kristen and Kimberly as pigs, did you?

A No, sir.

Q Now, about floral wreaths—you said that you said that you put four or five floral wreaths on—

A (Interposing) On a fence.

Q Where was the florist?

[5657] A About half a block up the street in Haymount.

Q Was this the first time you'd ever put floral wreaths on your lawn or the fence?

A To be honest, it is about the first time they put floral wreaths like that out.

Q Who else—did anyone else go with you to get the wreaths?

A Several people.

Q More than one?

A Yes, sir.

Q Did you ever go to this floral shop and get flowers when they would throw them out?

A All the time.

Q By "all the time," you mean once a week or—

A (Interposing) Any time that they would throw them out. We used to cut through the back there any-

way on our way to the pizza shop, so anytime there was fresh flowers thrown out we would take them back home with us.

Q In your mind, was there any connection at all between the MacDonald murders and the funerals, and the fact that you all went to get the funeral wreaths?

A No, sir.

Q You got them because they were available?

[5658] A Right.

Q Now, you said that you wore black, is that correct, or dark purple?

A Yes, sir.

Q Was that unusual for you?

A No, sir.

Q You normally wore that?

A Yes, sir.

Q Did you wear dark purple or black because that MacDonald family had been murdered?

A No, sir.

Q Did you wear dark purple or black because the MacDonald family was being buried at that particular time?

A No, sir.

Q Have you ever been violent before in your life?

A Never.

Q At any time—I believe you said "never," is that correct?

A Yes, sir.

MR. BLACKBURN: Just a second, Your Honor.

(Pause.)

BY MR. BLACKBURN:

Q You know, you have testified on direct [5659] examination this morning that a number of people in Fayetteville and Nashville, Tennessee, talked to you about the MacDonald murders?

A Yes, sir.

Q And you testified whether it was on direct or cross that you did not remember where you were, and that you had been picked up and questioned on a number of occasions.

As a result of not knowing where you were and not having an alibi, and as a further result of being questioned a number of times, did there come a time in your own mind when you began to worry yourself about your involvement in this killing?

A Yes, sir.

Q And is it fair to say that that is the reason that you became concerned, because of what I have just stated?

A It was more the reason of what I was talking about: these people.

Q One of the reasons that you were talking about were these people?

(Witness nods affirmatively.)

Q Because you didn't know where you were in answer to their questions?

A Yes, sir.

[5660] Q Let me hand you what has been marked for identification as Government Exhibit 306, a club. Prior to right now, have you ever seen that club before?

A No, sir.

MR. BLACKBURN: Your Honor, if we could have just one more moment.

(Pause.)

BY MR. BLACKBURN:

Q I think you testified on direct examination you were out in a car with some folks about 4:30 or 5:00 o'clock, is that right?

A Yes, sir.

Q And you don't remember who they were?

A No, sir.

Q Was it unusual for you to come in, in the morning at 4:30 and 5:00 o'clock?

A Not at all.

Q You had done that before?

A All the time.

Q Isn't it true that you might have been at a place called Dunkin' Donuts that morning?

A That is where I was coming in from at that time.

MR. BLACKBURN: Your Honor, at this time we would mark for identification Government Exhibit 952, [5661] which purports to be a photograph.

(Government Exhibit No. 952 was marked for identification.)

BY MR. BLACKBURN:

Q Ms. Stoeckley, let me hand you this and ask you if you can take a look at it. Do you recognize the person?

(Witness nods affirmatively.)

Q Who is it?

A Me.

Q Could you speak up a little louder?

A It is me.

Q Do you know when that photograph was taken?

A I think it was a few weeks after the murder, downtown in the police station.

[5662] MR. BLACKBURN: Your Honor, we would ask to publish this to the jury.

THE COURT: Very well.

(Government Exhibit 952 was received in evidence.)

(Exhibit passed among the jury.)

BY MR. BLACKBURN:

Q Do you know whether or not the photograph I was just showing to you—do you know whether or not that photograph was ever shown to Dr. MacDonald before?

A No, sir; I don't.

Q With respect to the mescaline that you took, I think you said one hit; is that correct?

A Yes, sir.

Q What would one hit do to you?

A Put you on a mild trip.

Q I think you have also testified that you had a lot of drugs in your body that day; is that correct—the 16th?

A Yes, sir.

Q Was that unusual for you to do that?

A No, sir.

Q That was fairly normal; is that correct?

(Witness nods affirmatively.)

Q Isn't it true that during this period of [5663] time in 1970, when you were taking these drugs, that days sort of ran together; is that correct?

A Yes, sir.

Q And at times, you would not know where or remember where you had been or what you had done; is that correct?

A Yes, sir.

Q This is not the first time in your life that you have not ever remembered where you were one night; is it?

A No, sir.

Q Now, I think they brought out that you had a neighbor named Mr. Posey; is that correct?

A Yes, sir.

Q And you testified, I believe, on Direct that you once told him somewhere that he had better tell his wife—

A (Interposing) To keep her door locked. That was a joke.

Q It was a joke? Why did you say that to him if you can recall?

A He was leading me on in this conversation, and I felt like he was trying to make me say things that I didn't want to say, and I just threw that in there.

Q Do you recall ever having a conservation with [5664] Mr. Posey when he offered to give you an alibi for where you were?

A Yes, sir.

Q He did? Did anybody else ever offer to give you an alibi?

A Yes, sir.

Q Did you ever take them up on it?

A No, sir.

Q When you talked to Ms. Zillioux, Mr. Underhill, Mr. Beasley, Mr. Gaddis, Brisentine, Mr. Posey—other than yesterday in Raleigh—is it fair to say that during this period of time in your life that you were still taking drugs?

A Yes, sir.

Q Did Mr. Beasley ever tell you that you had better come up with some kind of story?

A He said it would be to my advantage to try to figure out where I was that night.

Q You never made up any story as to where you were; did you?

A I tried.

Q You don't know who killed the MacDonald family; do you?

A No, sir.

Q Do you know of anybody who you think killed [5665] the MacDonald family?

A No, sir.

Q Now, the floppy hat which you said you had—and you liked your hat because you wore it almost all the time; is that correct?

A Yes, sir.

Q You kept that after the murders; didn't you?

A But I didn't wear it as frequently as I used to.

Q That is because you were being talked to, I suppose?

(witness nods affirmatively.)

Q These words that you testified in 1970—'69 and '70—the words "pig," "acid," "groovy," I think; were those common words at that time?

A Yes, sir.

Q You were not the only person that said those words?

A No, sir.

Q They asked you about Mr. Manson; do you recall that this morning?

A Yes, sir.

Q Did he have any power over you?

A No, sir.

[5666] Q Did anybody have any power like that over you?

A No, sir.

Q I believe you testified that when you got home in your apartment, some painting had been going on; is that correct?

A Yes, sir.

Q Was that an unusual occurrence at your house?

A Nothing was an unusual occurrence in my house.

Q Let me ask you this question, Ms. Stoeckley: is it fair to say that as a result of the MacDonald murders and the questions which you were asked in 1970, and because of the clothing that you owned, that you got a fair amount of attention from folks about this crime?

A Not especially attention—just harassment.

Q With respect to this hobby horse in the photograph, prior to seeing that horse in that photograph, have you ever seen that hobby horse before?

A Plenty of times.

Q When you were talking about a hobby horse being broken this morning—and I guess, maybe yesterday—which one were you referring to?

[5667] A Well, when I first looked at the picture yesterday, I thought it was broken.

Q That is the only significance that has to you?

A That is the only reason I said that.

Q Did it appear to you to be broken in the picture; is that correct?

A Yes, sir.

Q Now, I believe you said that on the 18th of February, 1970, you were detained by the Fayetteville police; is that correct?

A Yes, sir.

Q And you were expected to be interviewed by the CID?

A Yes, sir.

Q They did not show up?

A No, sir.

Q Isn't it true that there did come a time subsequent to that as I believe you testified that the CID did, in fact, interview you?

A Yes, sir.

Q Concerning the MacDonald killings?

A Yes, sir.

Q To your knowledge, were a lot of people being interviewed or questioned?

[5668] A Yes, sir.

Q By the CID or by the Fayetteville police?

A By someone—some law enforcement.

Q By law enforcement?

(Witness nods affirmatively.)

Q I believe you were asked a number of questions concerning the fact that you had moved as a result of the MacDonald killings; is that correct?

A It was one of the reasons; yes.

Q What were some other reasons?

A I had been to North Carolina Memorial and taken methadone and everything and I wanted to move away into another area where I could stay clean.

Q Is it fair to say that you were not particularly anxious to come to North Carolina this week?

A Yes, sir.

Q Prior to leaving North Carolina in 1970, you had cooperated in some ways with the Fayetteville Police Department; is that not correct?

A Yes, sir.

Q And as a result of that cooperation, is it not true to say that even today, you are still fearful for your safety?

A Yes, sir.

[5669] Q Isn't it true that that is the primary reason you did not want to come here and testify?

A It was one of the reasons; yes, sir.

Q You have no reason to believe, do you, that you were standing on a street corner at 4:00 o'clock in the morning on the 17th of February, near Fort Bragg; do you?

A I don't have any reason to believe that; no.

THE COURT: Mr. Blackburn, may I inquire—

MR. BLACKBURN: (Interposing) It would be a few more minutes, Your Honor.

THE COURT: Well, then, it is time for us to go to lunch on our Friday schedule and that is what we will do now. We will come back today at 1:30. You know, we only get one hour on Friday. If you will come back at 1:30. Don't talk about the case. Take a recess until 1:30.

(The proceeding was recessed at 12:32 p.m., to reconvene at 1:30 p.m., this same day.)

[5670] FURTHER PROCEEDINGS 1:30 p.m.

(The following proceedings were held in the presence of the jury and alternates.)

THE COURT: Any further questions of this witness?

MR. BLACKBURN: Yes, Your Honor.

(Whereupon,

the witness on the stand at the time of recess, resumed the stand, and testified further as follows):

CROSS-EXAMINATION 1:31 p.m.

(resumed)

BY MR. BLACKBURN:

Q Ms. Stoeckley, let me hand you Defendant Exhibit Number 86 and 89. With respect to Defendant Exhibit 86—that's a photograph of you I take it?

A Yes, sir.

Q Okay, if you don't mind, would you speak up a little bit louder?

A Yes, sir.

Q Do you know when that photograph was taken or what year it was taken?

A I think it was taken in 1970.

Q In 1970. Now, this drawing that was done [5671] is the Defendant Exhibit 89. Taking that drawing in its totality, is that you?

A No, sir.

Q You didn't sit for that drawing; did you?

A No, sir.

Q You don't know who drew it?

A No, sir.

Q I take it that you don't know then whether or not whoever drew it—this drawing—also had this photograph?

A No, sir.

Q Now, when you came home at about 4:30 or 5:00 o'clock that morning on the 17th, you got out of the car; you recall that?

A Yes, sir.

Q Did you see any blood on your hands?

A No, sir.

Q Did you see any blood on your clothes?

A No, sir.

MR. BLACKBURN: No further questions, Your Honor.

MR. SEGAL: I have a few questions on redirect, Your Honor.

THE COURT: All right, sir.

[5672] REDIRECT EXAMINATION 1:33 p.m.

BY MR. SEGAL:

Q Ms. Stoeckley, do you remember hearing about the funerals of the MacDonald family that were being planned; do you recall that?

A Being planned?

Q Yes; you heard that there was going to be a funeral of the MacDonald family; hadn't you? You heard that in 1970?

A Yes, sir.

Q Didn't you want to attend that funeral?

A I made mention of that fact at one time.

Q Does that mean that you did or not want to go to the funeral of the MacDonald family?

A At one point I did.

Q I can't hear you.

A Yes, sir.

Q And did you talk to some other people about going to the MacDonald funeral?

A Just about getting a way to it or if I would be allowed to go to it or something like that.

Q And was the only reason why you didn't go to the funeral was because you couldn't get anybody to take you out there?

[5673] A No.

Q What was the reason why you didn't go?

A I just changed my mind.

Q Who was it that you talked to about the fact that you wanted to go to the MacDonald funeral?

A I'm not even sure.

Q Was it people that you lived with in the house?

A Probably someone who frequented being at the house quite a bit.

Q What did you mean when you said you weren't sure you would be allowed to go?

A Well, I didn't know if it was for family members or what.

[5674] BY MR. SEGAL:

Q Now, your testimony is that you had never met the MacDonald family prior to February 17, 1970; correct?

A Yes, sir.

MR. BLACKBURN: Your Honor, I would OBJECT.

THE COURT: Yes; I don't see that this—it is what you went into, I think, on direct examination. And on cross-examination, I don't think that there has been anything new brought out about this, has there?

MR. SEGAL: I thought it related to some issue. I have nothing further on that point, Your Honor.

THE COURT: All right.

BY MR. SEGAL:

Q You were asked by the Government's Attorney whether anybody had power over you. Do you recall being asked that?

A Yes, sir.

Q And was your answer—your answer was that nobody had power over you; is that right?

A Yes, sir.

Q In 1969 and 1970, did some drug have power over you when you used it?

A A drug did; yes, sir.

[5675] Q What was the drug that most had power over you when you took it?

A Heroin.

Q What about LSD?
MR. ANDERSON: OBJECTION.
THE COURT: OVERRULED.

BY MR. SEGAL:

Q Yes, Ms. Stoeckley?
A It didn't really have any power—well, I couldn't control it.
Q Can you tell us a little more clearly, when you say you couldn't control it?
A I mean, I couldn't control my actions when I was on it. That is why I discontinued using it.
Q You discontinued—finally discontinued using LSD in what year?
A About '71.
Q And when you discontinued using it, was it because when you used it, you had thoughts that were related to the MacDonald case?
A Not necessarily; no.
Q Not necessarily?
A No.
Q Did you have thoughts relating to the murders of the MacDonald family when you were using LSD between [5676] February 17, 1970, and when you stopped in 1971?
A I don't know what I would be thinking when I was using LSD.
Q Well, what is it, if you can tell us more precisely, that finally made you stop using LSD regularly.
A It wasn't any one thing. I just got tired of the drug taking me.
MR. SEGAL: Bear with me just one second, please.

(Pause.)

MR. SEGAL: I have no further questions of this witness at this time, Your Honor.
MR. BLACKBURN: Your Honor, I would like to have one question, if I might.
THE COURT: All right.

RECROSS-EXAMINATION 1:33 p.m.

BY MR. BLACKBURN:

Q Ms. Stoeckley, have you ever been formally accused or convicted of any crime of violence?
A Of violence?
Q Yes, ma'am.
A No, sir.
MR. BLACKBURN: No further questions.

* * * *

[5688]

TESTIMONY OF WITNESSES ON VOIR DIRE

JANE ZILLIOUX

was called as a witness, duly sworn, and testified as follows:)

[5689] THE COURT: Get right on with it.
MR. SMITH: Your Honor, Mr. Segal and I have divided these witnesses, and Ms. Zillioux is his witness. If I begin that examination, could you permit him to take over.
THE COURT: All right, why don't you just make a statement as to who she is and then go right on into the questioning.
MR. SMITH: All right, Your Honor. This witness is Jane Zillioux. You already have the spelling of her last name. Let me get her address and so forth.

DIRECT EXAMINATION 1:59 p.m.

BY MR. SMITH:

Q Where do you live, Ms. Zillioux?
A Miami, Florida.
Q How long have you lived in Miami?
A Since 1972.

Q Where did you live before you moved to Miami?

THE COURT: She lived across the street from this Stoeckley witness. I said get right on into the thing.

MR. SMITH: I am moving right to it, [5690] Your Honor.

[5690] THE COURT: All right.

BY MR. SMITH:

Q Did you live near Ms. Stoeckley?

A Across the street.

Q In what city was that?

A Nashville, Tennessee.

Q Did you ever talk with Helena?

A Many times.

Q Could you state whether or not you ever talked with Helena any about the MacDonald murders which you have heard had occurred in Fayetteville, North Carolina, in 1970?

A Yes, sir.

Q Do you remember any of the statements she made to you about that?

A Yes; I do.

Q Would you state for the Court the circumstances under which she made the statements and what she said?

A Yes; I will.

Q Okay.

A Helena lived across the street from me in Nashville, Tennessee. She lived in a very small, white house, and the house was—a lot of hippies [5691] lived there. I lived across the street. I was making a living as a freelance artist, and the rent was cheap there. Helena and I both sometimes worked for a small shoe store named Bonnie Shoetique.

It was on the corner of Belmont and Portland Avenue. There was a vacant lot between the hippie house and Bonnie Shoetique. Helena was around the neighborhood. I had known her for several months and I had seen her on many occasions.

On occasion, we had worked together for Bonnie on Saturdays maybe when Bonnie would have a sale—a big shoe sale. And I had—my first meeting came—I had a great big, yellow cat, and he used to wander out of the apartment, and she retrieved him for me one day.

That's how I got to meet her, and I thought she was a runaway. You know, she seemed very young to me. I didn't know how old she was. I never asked her. I just—she looked too young to be away from home.

She was sick. She had hepatitis. On a lot of occasions when I would see her, she would be yellow. Even her eyeballs would be yellow, and one day—I hadn't seen her for a few days and I thought, "Well, I better check on her." So I went over there.

[5692] It was in the evening. I don't know what day it was. I can't remember. It's been that long ago.

BY MR. SEGAL:

Q Can I just ask you one question: do you know approximately what month that would be in?

A Yes, sir; I met Helena first in September, and this was probably before Thanksgiving.

Q 1970?

A Yes, sir.

Q All right, go ahead and tell us about that evening.

A I went to her house to see if she was all right, because I was worried about her. I hadn't seen her for a few days and I didn't know if those hippies were feeding her or not or how she was getting her food.

So, I went over and I knocked on the door and I called and I said, "Helena, are you there?" And she said, "Yes." She came to the door. It took her a few minutes, and, as she opened the door, she turned around, and I followed her into the house.

I went into her room. It was the front room right on the street. And she went over. She was weak and she was shaky and she sat down on the [5693] bed, and I

sat down beside of her, and I said—you know—"I haven't seen you for a few days and I was worried about you—you know—are you all right?"

She said, "I've been sick," and I said, "Well, Helena, why don't you go home. You know, why don't you go home to your family and let them take care of you?" And she said, "I can't. I can't ever go home again."

I said, "Well, why?" She said, "Because I was involved in some murders," and she said, "My family don't want me around."

Q What did you say or do when she said she was involved in some murders?

A I didn't say anything. I was just too shocked. You know, I expected a teenage confession like "I hate my mother," you know, or "I'm a runaway." I didn't expect that. I was horrified. I—

Q (Interposing) Did you do or say anything to express your shock?

A I did. I said, "Well, did you do it?" She said—I'm trying to remember the exact words—she said, "I don't know whether I did or not." She said, "I've been a heavy drug user and when you are on drugs, you do funny things." She said, "Drugs make you—when you are on drugs, you do things that [5694] you don't think you did. Things you think you didn't do, you really did." She said, "I don't know." So, I said, "Well, why don't you tell me about it?" She said, "I can't remember."

But she said, "When I came to myself"—she skipped, you know, a whole—whatever it was—I didn't want to hear it anyway. She said, "When I came to myself, I was in the rain," and she said, "It was raining," and she said, "I was terrified."

And when she said "I was terrified," she took her arms like this and she hunched her body over like this and the tears were running down her face and the mucous was dripping from her nose, and she was hysterical, and she was just crying.

I was trying to calm her down. I wanted to get out of there because I didn't know if she was on drugs or not, but I wanted to get out of her apartment because I was—I didn't want to be there. I didn't want to hear that.

So, anyway, I said, "Well, who were you with? She said, "I was with three boys." I said, "Did you know them?" She said, "No, I didn't know them." I said, "Well, why were you with them?" She said, "I was with them for the drugs." She may have said the name of the drug but, if she did, it didn't [5695] mean anything to me because I have never been around drug addicts, and I don't know anything or how they act. I don't know anything about that.

So, anyway, about that time, after I said, "Well, if you knew the names of these people, you could tell." She said, "But I don't know their names." I personally thought she did know their names but she said she didn't.

So, she grabbed hold of my arm—my forearm—and she said, "You won't tell; will you?" I said, "No, I won't." And just as quickly as I could, I got out of there, and I went back to my little apartment, and I thought about it for a few days, and I discussed it with Bonnie Hudgins, the lady who owns Bonnie Shoetique, and I said, "Did you know Helena was involved in some murders?"

She said, "Yes, I knew that." She said—I said, "You know, I don't know much about it. She just told me it was in Carolina," and she said, "It was the Green Beret murders." I said, "Oh." She said, "Did you know Helena was working for the FBI as a narc?" I said, "I had heard rumors, but I am not sure."

[5696] THE WITNESS: (Continuing) So, I called the FBI. I picked up the telephone after about three days, and I called the FBI, because I had thought about it and I was convinced that Helena had had something to do with this; and I thought, "Well, if I call the FBI, I'll have been doing 'my duty.'" You know, I didn't want

to live in the neighborhood with her, and I didn't want to be around her, because I didn't know when she might not freak out again.

So when I called the FBI I got the royal "Yes, ma'am, thank you, ma'am; we'll check it out, ma'am," and that was all.

I avoided Helena after that because I didn't want her to know that I had called the FBI, and I felt guilty because I told her I wouldn't tell—but I did call the FBI.

BY MR. SEGAL:

Q Ms. Zillioux, when you called the FBI, did you give the name of the person that you were talking about?

A I told them that her name was Helena and she was involved in those murders in Carolina—the Green Beret murders.

Q Did you give them an address as to where she was?

A Yes, I did.

[5697] Q Now, let me go back if I can for a minute over the conversation. You were describing where Helena was crying, that she was talking about standing in the rain, and she hugged herself?

A Yes.

Q Did she at any time look at her hands or say anything about her hands?

A Oh, well, I'm sorry. I just—I'm not accustomed to speaking in front of people.

When she leaned over and she hugged herself like this, and she was telling me about standing out in front of the rain when she came to herself—she was speaking with her hands.

So she flipped her hands like this, and she said, "So much blood," she said, "So much blood. I couldn't see or think of anything except blood," and she said, "I asked the boys to take me home. I had to get home."

I did ask her at that time, "What did you do with your clothes?" She said, "I got rid of them." I didn't ask her how she got rid of them. She just got rid of them. I didn't ask her any questions, you know.

Q Did she say anything about not wanting any more connection with those clothes?

A Yes, she did.

[5698] Q What were her words, if you can remember?

A I said, "Well, why—you know, why did you get rid of them?" She said, "Because they were the same clothes that the woman in the case was supposed to have been wearing."

Q Now, did she say who were the persons murdered either not by name or—

A (Interposing) She said a woman and two small children.

Q Did she ever mention something about her wig?

A Yes, she had—she told me she had on her blond wig and her white boots. I know that they were white plastic-leather boots because before that when we had been working in Bonnie's Shoetique, she pointed the boots out to me—a pair that was in the store; and she said, "I had a pair of boots like these, and I loved them, but I had to get rid of them."

Q Did she say anything about whether she was wearing the wig while she was standing out there in the rain?

A Yes, she did, because she didn't know—it was—from her account it was raining heavily; and she was afraid her wig would be ruined, and she was worried about the wet wig.

[5699] Q Now, you said that during the time that she was telling you these things she was crying, is that right?

A She was hysterical, and then she would pause, and then she would get herself under control; and then she would lose control again. It was very bad for her and

me too. It was heavy. It—you know, it was hard for me to handle.

Q And when you say "lose control," what do you mean—

A (Interposing) Sobbing, crying, you know—holding herself, grasping her arms, her stomach, you know, tears coming down her face—blubbering, incoherent.

Q What was her—I'm sorry; are you through?

A That's all right.

Q What was her condition when you left; I mean what was she doing?

A She was laying on the bed crying when I left. There were people who came in. This was a hippie house, and the bed was like this. The front door was where the judge was sitting, and there was another door directly over at this side.

The two of us were sitting on the bed, and on at least two occasions that I know of hippies came [5700] to the door and she screamed at them, "Get out of here, get out of here." And she was screaming, you know, for them to get out, you know.

Q In other words, she did see other people when they came in and she reacted to their being there?

A Yes, sir.

MR. SEGAL: I have nothing further on the witness at this time. That is the offer we make in this regard. [5701] MR. BLACKBURN: Let me ask just a small number of questions, Your Honor.

CROSS-EXAMINATION 2:12 p.m.

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BY MR. BLACKBURN:

Q Ms. Zillioux, I think you stated that she was almost incoherent while she was talking to you?

A At times periodically.

Q When you went in to see her at first, what was her condition?

A Shaky. She was sick with hepatitis.

Q You don't know whether or not she was taking any drugs at that time?

A I am sorry, sir. I have never been around people on drugs, and I have no idea what they are like. Even today, I couldn't tell you. If you were on drugs, I couldn't say to anyone that you were on drugs because I really don't know.

Q She said that she was involved with the murders; did she?

A Yes, sir. She said, "I was involved in some murders and my family don't want me around."

Q Did she actually say that she killed somebody or just say that she was involved?

A She was involved.

[5702] Q She did not define what the term "involved" meant?

A No, sir, and I didn't ask.

Q You said something—I am not sure I got the full thrust of this, but she said that drugs make you think—

A (Interposing) Drugs do funny things to you.

Q Tell that very slowly.

A Okay. I may have gotten my words mixed up. "Drugs do funny things to you. When you are on drugs, things happen you think didn't. Other things that did happen, you think didn't happen that you think did." It is kind of a tongue twister, but those were her exact words, you know.

Q You may have answered this, but let me ask it anyway with respect to that remark: did she ever say anything like, "Sometimes drugs make you think that you did something—

A (Interposing) That was not what she said.

Q She never said that?

A No, sir.

MR. BLACKBURN: No further questions, Your Honor.

MR. SEGAL: Thank you, Ms. Zillioux. [5703] You may step down.

THE COURT: Did I understand you to say that she stated that she did not know whether she committed a crime or not?

THE WITNESS: Well, this morning in the Courtroom—

THE COURT: (Interposing) Listen, I want to know what she told you—did I get this down right—"I don't know whether I did it or not," is that what you said?

THE WITNESS: Yes, sir.

THE COURT: That is what she said to you?

THE WITNESS: Yes, sir.

THE COURT: Call your next witness.

(Witness excused.)

MR. SMITH: Jim Gaddis is the next witness we would call.

(Whereupon,

JAMES T. GADDIS

was called as a witness, duly sworn, and testified as follows:)

MR. SMITH: Mr. Gaddis, take the witness stand, please, sir.

THE COURT: Just go ahead and tell us [5704] who he is and then ask the questions, will you, please?

MR. SMITH: Your Honor, this witness is named Jim Gaddis. He is a police officer in Nashville, Tennessee.

DIRECT EXAMINATION 2:13 p.m.

BY MR. SMITH:

Q Mr. Gaddis, do you know Helena Stoeckley?

A Yes, sir; I do.

Q Did she ever make any statements to you about any murders which took place in Fayetteville, North Carolina, in February, 1970?

A Yes, sir; she did.

Q If you will move as quickly as you can, skip any of the preliminaries, and tell the Court exactly as you recall what she told you?

A I talked with her on several occasions about the murders. She said that she thought she had been there when the murders took place. The night that the murders took place, she had tripped out on some mescaline and some LSD and she remembered being there. On other occasions, she would say that she knew who had done it, but that she wasn't there. She would get very depressed when she talked about it. In fact, on several occasions, she would become so depressed that we could [5705] not even talk with her. It led me to believe that she did talk—it led me to believe that she was there and had been there.

Q Mr. Gaddis, did she seek you out or did you seek her out?

A She sought me out.

Q Would you tell the Court how that happened?

A I had been working a special assignment hunting for a person who was assaulting women in the area where she lived. I had driven by her house one night and she stopped me. After talking several minutes with her, she said that she had some information she wanted to give me concerning some drugs that were being used in the area and also about a police officer on our department who was selling drugs to children.

[5706] BY MR. SMITH:

Q How did she get into the subject of the MacDonald murders?

A After about two or three days of talking with her about the police officer and the other drugs being used in the area, she asked me if I could find out if she was still wanted for questioning in the MacDonald murders, and explained to me that she thought she was, but she wasn't sure, and told me who to contact, which I did.

Q Did she then give you specific names?

A She gave me the names of a boy named Greg. She did not know his last name at the time—but also a gentlemen named Bruce Fowler whom she had been with the night that she took the mescaline and the LSD, and who had a blue Ford Mustang.

Q Did she ever make any further description to you about what occurred, giving you any specific examples or any other specific information?

A The only information that she related to me was that she had been at the scene. She felt she had been there, and that the clothes she wore while she was in Nashville fit the exact description of the clothes of the female that was involved in the murders themselves.

Q When you talked with her, Mr. Gaddis, in your opinion, was she under the influence of any narcotic [5707] drugs?

A At times she was and at times she wasn't. I knew that she was dealing some. I knew that she was using heroin at the time.

Q During the times that she gave you information about the MacDonald case, was it your opinion she was under the influence of narcotic drugs?

A She gave me information on several occasions. At times, she was under the influence. Most of the time when she gave me the information about the MacDonald murders, she was not.

MR. SMITH: You may examine.

CROSS-EXAMINATION 2:18 p.m.

BY MR. BLACKBURN:

Q Mr. Gaddis, is it true that Ms. Stoeckley has told you that on the 17th of February, she took LSD but that it had no effect on her?

A That is correct.

Q Is it not true that she has told you at one time that she remembers nothing about that evening, but that she does remember coming home in a blue automobile?

A That is correct also.

Q Isn't it true that at one time, since you have met her, she said that she cannot remember who she [5708] was with or where she went?

A That is correct also.

Q And she has told you, I believe, that at one time she knew who was involved, but did not give you any names?

A That is correct also.

Q And at another time, she said she only had suspicions of who was involved?

A That's true.

Q Isn't it true that at other times she said Dr. MacDonald did the killings?

A That is true also.

Q In your opinion, has she ever simply said things to you but refused to explain them any further?

A Yes, sir; she has.

Q Has she ever described the inside of the MacDonald apartment to you?

A No, sir; she didn't.

Q Now, on the 23rd of April, 1971, did you have occasion to see her?

A Yes, sir.

Q At that time, did she say to you that she was not involved, but that she knew who was?

A Yes, sir.

Q And that on the same day, she said that she [5709] was there, and she witnessed the murders?

A That is correct, but she had not been involved in the actual killings themselves.

Q Right; and she has given you the name of at least two people, but no others?

A That is correct.

Q Has she ever said anything to you about any of the weapons that were used?

A No, sir.

Q Anything about candles?

A No, sir.

MR. BLACKBURN: Your Honor, that concludes our questioning.

THE COURT: All right. Call your next witness.

MR. SEGAL: Mr. Underhill, please.

THE COURT: While he is coming, let me ask Mr. Gaddis just one question. On the basis of what this girl told you—these murders—had these murders happened in Nashville, would you have issued or signed a warrant for her?

THE WITNESS: I am not sure, sir. I have a feeling —like I say, I would have tried to have her indicted.

THE COURT: You would have investigated [5710] further?

THE WITNESS: I would have investigated further, and I would have indicted her; yes, sir.

THE COURT: All right; call your next.

[5711] (Whereupon,

CHARLES EDWARD UNDERHILL

was called as a witness, duly sworn, and testified as follows:)

DIRECT EXAMINATION 2:20 p.m.

BY MR. SEGAL:

Q Mr. Underhill, were you living in Nashville in late 1970?

A Yes, I was.

Q Did you know Bonnie Hudgins, a lady now known as Jane Zillioux, and Helena Stoeckley?

A Yes, sir; I did.

Q Did you have an occasion in late 1970, to go to Helena Stoeckley's apartment where she was living?

A Yes, I did.

Q Do you recall what month that was?

A It was in the month of December.

Q What happened when you got to the door of her apartment?

A Well, I just walked up and knocked on the door. After I had knocked—of course, this was like in the same second, really, or two seconds, and I heard someone crying—more or less, just into a hysterical sob instead of a normal cry. I asked, "Helena?" The [5712] voice that came back was "Get away."

I asked again—I said, "Helena, is that you in there crying?" She said, "Get away. I don't want to see you or nobody," so I said, "Well, I will go down and get Bonnie and she can come down here and maybe straighten you out."

She said, "Who is it?" I said, "It is Underhill." She said, "Red?" I said, "That is right. I am going to get Bonnie," which the lady had been working with her and helping her along and so forth. Then, she said, "Wait a minute. Don't go get Bonnie. I will let you in," which she came to the door and unlocked the door and I walked in—the first and only time I have even been in her apartment.

I asked her—I said, "What in the world is wrong with you carrying on like this—something happen to you? What is wrong? Tell me." She just started sobbing worse and just terrible. The next thing that came from her mouth was, "They killed her and the two children."

I said, "What is wrong with you, you goofy fool, are you on dope or something?"

BY MR. SEGAL:

Q What did she say?

A And then, at that minute, she reversed it for [5713] some reason—why, I don't know—and said, "They

killed," and sobbing just hysterically at the same time getting these words out, "they killed the two children and her," so it is stated one way and then reversed. I said, "Ah, you are just as goofy as hell. Something is wrong with you, so I am going to get Bonnie right now, and Jane, and see if they can't take you somewhere or do something for you or help you or do something." She begged me not to go get them, so I just left and went across the street where Jane was living and told Jane—I said, "She is over there crying and screaming and carrying on. You better go check on her or something." That is the end of that situation.

Q All right, did you ever find out from her about what woman and two children she was talking about?

A Well, I never did ask her as to names—what could be the names of these two people, just where they lived, or whatever. I never did ask her those questions.

Q Did she indicate where they took place?

A Only North Carolina is the only thing she said—did not name a city—just North Carolina.

MR. SEGAL: Cross-examine?

CROSS-EXAMINATION 2:24 p.m.

BY MR. BLACKBURN:

[5714] Q Mr. Underhill, I believe you testified that she was crying hysterically; is that correct, when you saw her?

A Right. You are correct.

Q Do you know whether or not she was on drugs or anything like that?

A Well, I don't fool with drugs. I wouldn't give you a dollar if this room were full of them. I don't fool around with drunkards, liars, and dopeheads, and stuff of this nature; so naturally, whether she could be on drugs or not, I would not know because I am not qualified to know.

[5715] BY MR. BLACKBURN:

Q She was not in a calm state of mind?

A Well, whatever had got her in the state of crying or whatever had built—got her built up to get in this state, I don't know.

Q Is it correct to say that what she told you was that, "They killed her and the two children," and that, "They killed the two children and her," is that correct?

A That is correct.

Q And that this took place in North Carolina?

A Right.

MR. BLACKBURN: No further questions.

MR. SEGAL: Thank you, Mr. Underhill.

(Witness excused.)

MR. SMITH: Robert A. Brisentine. Your Honor, while Mr. Brisentine is coming in, let me state for the court that his name is Robert A. Brisentine, Jr., and he lives on Chesney Lane in Bowie, Maryland.

(Whereupon,

ROBERT A. BRISENTINE, JR.

was called as a witness, duly sworn, and testified as follows:)

DIRECT EXAMINATION 2:28 p.m.

[5716] BY MR. SMITH:

Q Mr. Brisentine, have you ever interviewed Helena Stoeckley?

A I have, sir.

Q Do you recall about when that was?

A Yes.

Q When was it?

A On the 23rd and 24th of April, 1971, sir.

Q Where were you when you interviewed her?

A In Nashville, Tennessee, sir.

Q Did you retain any notes from that interview?

A I did, sir.

Q Do those notes refresh your recollection as to statements she made to you?

A Yes, sir, they would.

Q Do you have any of the notes with you on the witness stand?

A Yes, sir.

Q Would it help you to refer to those notes—

A (Interposing) It would, sir.

Q —in stating to the court what she said to you?

A It would, sir.

Q If you will use those notes to refresh your [5717] recollection, state to the court what Helena Stoeckley told you, if anything, relating to any murders that took place in Fayetteville, North Carolina, in February of 1970?

A Helena Stoeckley—I interviewed her on the 23rd for a period of four hours and 20 minutes, sir; and on the 24th of April—23rd of April for four hours and 20 minutes, and the 24th of April for six hours and six minutes.

She stated on the 23rd, during that particular interview, that due to a mental block—and that is the terms that Ms. Stoeckley used—she does not remember her activities or whereabouts between 00—well, that's 12:30 a.m., to 4:00 o'clock a.m. on the 17th of February; that during a period of three to four months subsequent to the homicides in the MacDonald residence, she was convinced that she participated in the murder of Mrs. MacDonald and her two children; that she presently is of the opinion that she personally did not actively participate in these homicides, but may have been physically present at the time of the murders; that prior to the homicide she had heard that the hippie element was angry with Captain MacDonald as he would not treat them by prescribing methadone for their addiction to drugs.

[5718] Ms. Stoeckley later retracted this statement and said that she only thinks she heard of Captain MacDonald

before the murders; that she had never been to Captain MacDonald's residence prior to the homicide; that prior to the homicide she had visited Castle Drive, Fort Bragg, North Carolina, for the purpose of delivering illicit drugs to an officer she knows only as Bob; that approximately 24—12:00 p.m.—12:00 o'clock p.m., 16th of February, 1970, she and a man named Greg Mitchell consumed LSD and mescaline; that she was using all types of drugs—opiates, heroin, marihuana, depressants, stimulants, and hallucinogenics prior to and immediately following the homicides.

That during April, 1970, she was admitted to the University of North Carolina hospital for hepatitis and drug addiction; that as a result of excessive drug use during the time of the homicides, she was not always oriented as regards time, dates, and surroundings; that since the deaths of Mrs. MacDonald and her children, she, Helena Stoeckley, has suffered nightmares whenever she sleeps, and that due to these frightening dreams she is afraid to sleep, causing insomnia.

That her original dreams portrayed the word "pig" in blood on the headboard of Mrs. MacDonald's [5719] bed.

Ms. Stoeckley described her dream by printing the word "pig" horizontally on the left side of a drawn picture of a bed headboard. She asserted that in her dreams the word "pig" is always on the left side of the headboard.

[5720] THE WITNESS: (Continuing) That during the past three or four months her dream places her on the couch in Captain MacDonald's living room and that Captain MacDonald is pointing at her with one hand while holding an ice pick that is dripping blood with the other hand.

That during February, 1970, she possessed and occasionally wore a pair of white boots, a floppy type, white hat, and a blond wig. That following the homicide, she discarded the boots, wig, and hat. That about the same time as the homicide, she stole some floral wreaths from

the florist in Fayetteville, North Carolina, and displayed them in the front of her residence.

That one of the wreaths had the word "Mother" written on its ribbon while one or more of the other wreaths had the word "Sister" written on them. That immediately following the homicide, she wore black clothing and the day of the funeral of Mrs. MacDonald and her children, she—Ms. Stoeckley—meditated and wore black clothing.

That she desired to attend the MacDonald funerals but did not attend as none of her friends would accompany her. That she went into hiding to evade police arrest subsequent to the homicides and [5721] considered fleeing from Fayetteville, North Carolina. That she knew the identity of the persons who killed Mrs. MacDonald and her children. That if the Army would give her immunity from prosecution, she would furnish the identity of those offenders who committed the murder and explain the circumstances surrounding the homicides.

BY MR. SMITH:

Q That concludes the gist of the statement she made to you; is that correct, Mr. Brisentine?

A On the 23rd; yes, sir. That's not the 24th.

Q All right, now, did she make a statement to you on the 24th?

A She did.

Q What did she say?

A On the 24th Ms. Stoeckley related she had been incorrect in her statements and had and I quote "talked too much" and that she only suspected some people of committing the homicides. At this time, Ms. Stoeckley stated that she suspected Don Harris, a Caucasian male, who told her after the homicide that he must leave Fayetteville, North Carolina, as he could not find an alibi for the time of the murders; Bruce Fowler, the owner of a blue [5722] Mustang automobile in which she, Ms. Stoeckley, was a passenger or a driver on the night of the

homicides; Janet Fowler, wife of Bruce Fowler and who was employed as a go-go dancer in Fayetteville, North Carolina, at the time of the homicides.

I should digress here, sir. I later learned this lady's name was Janice Fowler—not Janet Fowler.

Q All right.

A Joe Kelley, a Negro soldier who was assigned to a medical holding detachment at Womack Army Hospital, Fort Bragg, North Carolina, at the time of the homicides, and a Negro male she knew only as "Eddie" who introduced her—Ms. Stoeckley—to heroin.

At one time during the interview on 24 April, Ms. Stoeckley asserted that she had been lying when she admitted knowing who committed the homicides and stated that Captain MacDonald had killed his family. Further, that her rationale was based on the fact that four hippies could not have entered Captain MacDonald's home without being observed by neighbors or causing dogs to bark.

Ms. Stoeckley further explained that it had been drizzling rain during the night but that it [5723] did not start to rain hard until after the homicides. On inquiry from me, Ms. Stoeckley explained, "I've already said too much." Later, during the interview, Ms. Stoeckley again repeated her previous statement about saying she suspected hippie-type individuals of the crime.

Q Does that conclude her statements to you?

A Basically. That is all the notes that I took during the statement.

MR. SMITH: You may examine.

[5724] CROSS-EXAMINATION 2:35 p.m.

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BY MR. MURTAGH:

Q Mr. Brisentine, were you ever in the Army?

A Yes, sir.

Q How long, please?

A I was on military active duty for 22 years, sir.

Q During the course of your active duty in the military and subsequent to that time, have you observed many people under the influence of narcotics?

A Yes, sir.

Q Would it be accurate to say that you would recognize an addict or a junkie when you see one?

A I would say in a lot of instances, if not in most instances, if an individual is on drugs at the time, I probably could recognize it as being some type of intoxicant.

Q Would you describe your observation, sir, if any, of Ms. Stoeckley on the 23rd of April and the 24th of April?

A On the 23rd of April, sir, Ms. Stoeckley, in my opinion, was under the influence of narcotics.

Q And on the 24th of April, which is, I believe you testified, the time at which she retracted her previous statement?

[5725] A Yes, sir. Well, Ms. Stoeckley would retract, and then she would again say, yes; that she was there. "No; I was not there." "I am involved." "I am not involved." Basically, though, generally speaking, on the 23rd she contended that she was involved in these homicides. On the 24th she did change originally, but then later said she did know something about it.

Q Would it be accurate to say that the overall situation would be that she was all over the lot, whether she was involved or not involved?

A She certainly changed her statements during the two days; yes, sir.

Q Did she ramble at any time?

A On the 23rd, she rambled some; on the 24th, she was in much better mental condition.

Q Did she seem, at any time, out of touch with reality?

A She was very nervous, somewhat depressed occasionally, on the 23rd. And she made statements that

would indicate that she may not be completely oriented at that time on the 23rd.

Q Let me ask you, have you ever been at the crime scene?

A Yes, sir.

Q Was that prior to interviewing Ms. Stoeckley?

[5726] A Yes; that was a year prior, in April of '70, I believe, sir.

Q Okay; would it be accurate to say that you were generally familiar with this investigation?

A I was generally familiar with the crime scene and I had a general familiarization of the investigation. I did not know all aspects of the investigation.

Q Okay; and I believe you testified that she described the letters as "pig" on the headboard; is that correct?

A She drew it on the headboard. Well, she drew it on a photograph of the headboard.

Q Had you seen that headboard previously?

A No, sir; I had not seen the headboard. I had seen a photograph of the headboard.

Q Let me ask you, do you know which way the letters "pig" go on the headboard?

MR. SEGAL: Your Honor, I don't think this goes to the question of voir dire. It is really general cross.

THE COURT: I rather think it does. I will OVERRULE this, if it is an objection.

MR. SEGAL: All right, sir.

BY MR. MURTAGH:

Q On the actual headboard, which I believe you [5727] saw a photograph of, which way?

A Horizontal, if I recall, sir—I mean, vertical.

Q Which way did Ms. Stoeckley do it?

A Horizontal.

Q Do you know whether the fact that the letters "pig" were written in blood on the headboard had ever appeared in any of the Fayetteville papers?

A I can't tell you, sir, what was in the Fayetteville paper.

Q Would you agree, if I were to suggest to you that it was published in the paper?

MR. SMITH: OBJECTION. How could he possibly know?

THE COURT: OVERRULED. I don't think the question is going to prove anything, but this is voir dire. There is no jury here.

MR. SMITH: The basis of my objection is the previous answer made it impossible for him to know.

BY MR. MURTAGH:

Q Now, in her statement in which she said she had a dream or nightmare about being in the living room, who was holding the ice pick?

A Captain MacDonald.

[5728] Q Captain MacDonald was holding it? Okay; was she able to describe the house to you in any way—the interior of the house?

A No; that was part of—that was the reason I was trying to get some information, to find out what she knew about the interior of the house. That is why I asked these questions.

[5729] BY MR. MURTAGH:

Q Did she tell you anything that wasn't common knowledge, if you know, sir?

A She did not tell me anything that I didn't know, sir.

Q Did she tell you anything which indicated insider's knowledge of the crime scene?

A No, other than she knew about the blood on the bed. I can't recall anything else that she told me.

Q All right, now, she named some individuals; did she not?

A Yes, sir.

Q Did you conduct an investigation or are you aware of the results of the investigation, if any, of those individuals?

A Yes, sir. I am aware of the interviews and some portions of investigation of the other individuals, and I personally interviewed some of them.

Q If you know, sir, other than Helena Stoeckley's statement, is there anything that ties those people to the commission of this crime, whether they were fingerprinted or anything like that?

A I would have to answer those about each one, sir. I cannot answer that in one. As to the names that Ms. Stoeckley—

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[5735] THE COURT: The objection is OVERRULED.

THE WITNESS: Don Harris—I can't answer as relates to him as to what the investigation effort was pursued. Bruce Fowler—from what I could determine during my part of the investigation was not involved.

Janice Fowler—I couldn't determine during any part of my investigation that she was involved. Joe Kelley—I do not know about or the individual that Ms. Stoeckley identified as "Eddie" I do not know about.

BY MR. MURTAGH:

Q Mr. Brisentine, would it be accurate to say that all of Helena's statements that she made to you at various times pertained to her state of mind or her beliefs?

A I'm sorry, sir. I didn't hear your last part.

Q In other words, would it be accurate to say that all of Helena's statements—the "I did it; I didn't do it"—wouldn't this pertain to her state of mind or her belief?

MR. SEGAL: That's OBJECTED to. It goes to statements of fact that she has testified.

[5736] THE COURT: OVERRULED. Do you understand the question?

THE WITNESS: Yes, I understand the question.

THE COURT: Answer it, please.

THE WITNESS: It could be a state of mind, of course.

MR. MURTAGH: No further questions.

MR. SMITH: I would like to ask one additional one if I may.

THE COURT: All right.

REDIRECT EXAMINATION 2:47 p.m.

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BY MR. SMITH:

Q As a matter of fact, Mr. Brisentine, you were very impressed with the sincerity of Helena Stoeckley with you; weren't you?

A I was impressed with the fact that she made such admissions; yes.

Q And based on everything that you could observe about it, you had to figure that she was making those statements to you with some conviction; didn't you?

A That's true.

MR. SMITH: All right. No further [5737] questions.

THE COURT: That is that she honestly believed that these things were true.

THE WITNESS: I would have to say, Your Honor, that she honestly believed in her mind that what she was telling me was true.

MR. MURTAGH: One question.

RECROSS-EXAMINATION 2:48 p.m.

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BY MR. MURTAGH:

Q Would that be all of it? I mean, "I did it; I didn't do it."

A No; I would have to say, based on my investigation, that when she said she was physically present that she thought in her mind that she was.

Q Do you know for a fact whether she was present?
A No, sir.
MR. SMITH: OBJECTION.
THE COURT: I believe there was an objection. SUSTAINED. Call your next witness. And incidentally, of the five that you said you were going to call, he makes the fourth one in my count.
MR. SEGAL: There are two more. There are six then.
[5738] THE COURT: Okay, in this league, five means six.
THE WITNESS: I am excused, Your Honor?
THE COURT: As far as I am concerned, you are.

(Witness excused.)

(Whereupon,

P. E. BEASLEY

was called as a witness, duly sworn, and testified as follows:)

DIRECT EXAMINATION 2:49 p.m.

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BY MR. SMITH:

Q Your name, please, sir.
A P. E. Beasley.
Q Where do you live?
A Fayetteville.
Q What do you do, Mr. Beasley?
A I'm retired.
Q What did you do before you retired?
A I was a Fayetteville police detective.

[5739] BY MR. SMITH:

Q During the period of time in which you were a Fayetteville police detective, would you say whether or not you ever knew Helena Stoeckley?
A Yes; I did.

Q When did you first meet her?

A 1968.

Q Could you state whether or not, during the period of time in which you knew Helena Stoeckley, you ever had conversations with her about the MacDonald murders—what took place in February of 1970?

A Yes; I did.

Q Do you recall on about what date it was when you had your first conversation with Helena about that?

A On the morning of February 17th, I believe.

Q All right; and where were you when you had that conversation?

A In the driveway of an apartment where she was going into.

Q Mr. Beasley, would you tell the Court in your own words what you recall about that conversation?

A I had gotten off work prior to the incident that we are discussing and went home and went to bed about 2:00 o'clock that morning. I was called at home at approximately 7:30 or 8:00 o'clock and advised of this [5740] and gave descriptions of the suspects that was given out.

I got dressed and went downtown, or to the office and pulled out my notes and got some information that Ms. Stoeckley had given me on a trailer near Fort Bragg.

Q Let me interrupt you just for a moment, if I may, Mr. Beasley. I take it you had had many conversations with Ms. Stoeckley prior to that day?

A Yes; I did.

Q Had you found her to be a reliable person?

A The most reliable informant I ever had.

Q All right; you may proceed.

A Then, after I received descriptions of the suspects, I went to this trailer I knew she had been living at, and there was no one there. So I proceeded to look for her that day, and I couldn't find her or anyone else—the ones I was looking for.

So I went back home and went to bed. During the time I was at home, some other officers got my warrant and went back to the trailer, but we had searched this trailer prior to this—and recovered a large amount of drugs that she had told us was there, and they were there. We confiscated these drugs and we returned to the police station. I signed a warrant—I believe I signed [5741] it, and they went back later that afternoon and arrested one man.

And when I went to work, I found out that this had been done, so I went back to the apartment house where Helena was supposed to have been living. There was no one there, so I staked the place out, I guess, until 2:30 or 3:00 that morning.

She drove into the driveway with a group of people in—I believe it was an old convertible, Plymouth-looking car.

Q All right; Mr. Beasley, at this time it would be the 18th of February?

A Yes, sir; I believe it would.

Q All right; go ahead. What happened?

A I was driving an unmarked car and I was dressed in dungarees and leather jacket. I walked up behind the car and I called her to me, and as I called her she came towards me and the other subjects in the car also came toward me.

She turned around and told them it would be all right to sit down. So I took her to my car and asked her had she heard about this incident at Fort Bragg. She said she had, and I said, "Well, Helena, according to the information we've got, you and these people you are with fit the description that was given out." I said, "Now, [5742] I am going to ask you straight out, I know you and you know me. I want to ask you to tell me the truth."

She backed off and hung her head. She says, "In my mind, it seems that I saw this thing happen"; but she says, "I was heavy on mescaline." And she would not commit herself any further.

Q All right; what happened next?

A I got names of the other people that was in the car with her. I called CID at Fort Bragg and told them that I had some suspects in custody that fit the description—would the police come down?

I believe that was about 2:30 and at 4:30, or almost daylight, nobody had ever come or either returned my call. I released these people and let them go.

Q Did you ever see any of them again, other than Helena Stockeley?

A Never.

Q Did you ever see Helena Stoeckley again?

A Yes; I did.

[5743] BY MR. SMITH:

Q When did you next see her?

A I can't recall the time, but it wasn't long after that. Later, I went up to her apartment, tried to locate her again, and I believe the last time I saw her there was a bunch of wreaths out in the front yard, and I believe there was also one hanging on the front door.

Q Did you ever talk with Helena about that?

A Yes; I did.

Q What did she say?

A She said that she was in mourning.

Q In mourning?

A Yes, sir.

Q What was she in mourning about?

A In reference to the MacDonald murders.

Q Did she tell she was in mourning about the MacDonald murders?

A Yes; she did, and she was wearing black, and I might add that she would not—I was really wanting some information really—and she would not even talk to me about it.

Q When did you next talk to Helena?

A I can't remember, Mr. Smith. I don't know.

[5744] Q Did you ever talk with her out in Nashville?

A Oh, yeah, yeah. That was a year later—about a year later.

Q Why did you go out to Nashville to see her?

A An agent—I believe his name was Mr. Mahon—from Washington, D.C., came around the police station and contacted me; asked me about the situation and, of course, I told him what I knew and he asked me would I assist him in locating her and I said, "Sure, be glad to."

Q When you were out in Nashville talking to Helena, did you talk with her any about the MacDonald murder?

A Yes; I did.

Q Do you remember anything she told you out there?

A Basically the same thing she told me in Fayetteville.

Q Now, I take it that during the time you knew Helena in 1969-1970, you knew that she was a drug user?

A Yes, I did.

Q Nevertheless, did you find you could rely upon Helena to tell you the truth?

[5745] A Yes, sir.

Q When Helena told you she was going to be somewhere, would she be there?

A She would always be there. She was never late. She was always on time. If anything, she was early.

Q When Helena told you that you could find drugs at a location, did you find the drugs there?

A I found the drugs there.

Q Mr. Beasley, was that always the case?

A Always.

Q Did you feel that Helena was under the influence of drugs at times when she gave you information?

A At times I had suspicions. I didn't know for sure, but I did have suspicions that she might be.

Q Even under those circumstances when you had the feeling she was under the influence of drugs, did you find you could rely upon her—

A (Interposing) Yes, sir.

Q —to tell you the truth?
A Yes, sir.
MR. SMITH: You may examine.

[5746] CROSS-EXAMINATION 2:58 p.m.

BY MR. BLACKBURN:

Q Mr. Beasley, when you were in Nashville, Tennessee, do you recall making a statement dated March the 1st, 1971, concerning this?
A Any statements—I don't recall. It has been a long time. The files on this case have been misplaced. I have no idea where they are. I have all my statements in this folder, and if I could refer to them, I could tell you that.
Q I'll be happy to show you what I am talking about.
A All right, sir.
Q It may speed it up. Take a look at this, Mr. Beasley, and see if you recognize it. Do you recognize this as your statement?
A Yeah.
MR. BLACKBURN: For the record, Your Honor, he has identified a four-page statement.

BY MR. BLACKBURN:

Q Is that your signature?
A This is my signature.
Q Could you speak up, sir? We want to hear.
A That is my signature there.
[5747] Q Directing your attention, if you would, sir, to the second paragraph on the first page of a statement dated March the 1st, 1971, if you would read right there that sentence, sir?
A "She stated that she did not remember anything that happened on the night of the murders except that she did remember getting into a blue car she thought was a Mustang and it belonged to one Bruce Fowler."

Q Now, if you would read the sentence—let me see—the same statement, the third page, the second paragraph, the sentence which I have underlined, sir.

A "She again told me she had no knowledge of this night after 12:30 a.m. and that she does not know for sure what happened."

Q On the last page, the last sentence, sir.

A "It is my conviction that she is involved in the MacDonald case or at least she thinks she is or that she is doing this just to get all the attention she possibly can."

Q Now, I believe that you stated on the 17th or 18th, when you picked her up, the CID did [5748] not come or return the call, is that correct?

A No, sir.

Q Do you know whether or not the CID ever subsequently interviewed her?

A No; I didn't.

[5749] BY MR. BLACKBURN:

Q With respect to your first interview with Helena Stoeckley on the evening of the 17th of February, do you recall making a statement that, "Ms. Stoeckley did not indicate involvement in the murders at that time, nor did she indicate that she could recall her activities on that day in question?

A I don't recall.

Q You don't recall making that statement?

A No, sir.

Q Do you recall ever making the statement that during the investigation of the MacDonald murders, she was interviewed by the FBI and the CID and nothing concrete was established regarding her involvement?

A I don't know that either.

MR. BLACKBURN: No further questions.

MR. SMITH: May I ask one additional question?

THE COURT: Yes, sir.

REDIRECT EXAMINATION 3:02 p.m.

BY MR. SMITH:

Q On page 2, I believe—on the material that has been given you, Mr. Beasley—if you will turn to the second page—do you have any material up there now?

[5750] A I don't have anything.

Q Let me hand it to you.

THE COURT: Just read it to him.

BY MR. SMITH:

Q Mr. Beasley, do you recall making this statement or writing this statement down?

". . . After the night of the MacDonald incident I picked Helena Stoeckley up for questioning. I talked with her in reference to the case. She was in a joyful mood and joked about her ice pick."

Do you remember that?

A Your Honor—I mean Mr. Smith—she said so many —if I put it down there, she said it, because I didn't make it up.

Q All right, then; you do recall writing the material down in this statement that you have been furnished?

A Yes, sir; I wrote everything down that I could get.

Q Do you recall that what you wrote down in this statement was true at the time you wrote it down?

A Yes, sir.

MR. SMITH: That is all the questions we have.

[5751] MR. SEGAL: Thank you, Mr. Beasley. You may step down.

(Witness excused.)

THE COURT: Call your fifth witness for the second time.

(Whereupon,

WILLIAM EDWARD POSEY

was called as a witness, duly sworn, and testified as follows:

DIRECT EXAMINATION 3:03 p.m.

BY MR. SEGAL:

Q Mr. Posey, did you know Helena Stoeckley in 1970?

A Yes; I did.

Q Where did you live and where did she live?

A I lived right next door to her.

Q What street was that?

A Clark.

Q Do you remember the evening or early morning hours of February 17, 1970?

A Yes; I do.

Q Anything unusual happen that morning that attracted your attention?

A Well, I had got up to go to the rest room [5752] somewhere around 4:00 o'clock, and I heard a car whip into the driveway next door, and a lot of laughter and stuff going on, and I walked to the door to see what was going on.

Two of the girls—there was three of them that lived together in the apartment—two of the girls were inside painting the apartment. You know, they had the front door there, and Helena was coming from the car, you know—headed towards the apartment. And the car backed out.

Q Okay; you say two girls were in the apartment?

A Yeah.

Q Helena was not one of those girls?

A No; she was coming from the car.

Q Do you know what kind of car that was?

A I know it was a Mustang, you know.

Q Do you remember what color it was?

A It was blue.

Q Let me show you a catalogue piece which has been previously marked as Defendant Exhibit 88, provided by the Ford Motor Company in 1970. It depicts a number of models of Mustangs. Do you recognize any of those cars as being the car?

(Go to the next page.)

[5753] (Defendant Exhibit 88 was marked for identification.)

A The one circled.

Q The one circled is Mustang Mach Number One. As a matter of fact, you have seen this particular diagram before, have you not?

A Yeah; years ago.

Q Years ago—in 1970, when you testified at the Article 32 proceeding?

(Witness nods affirmatively.)

Q The car depicted here you say resembles the Mustang you saw in the driveway that evening?

A Yes (Witness nods affirmatively.)

Q Was there anything in particular about that episode that stood out in your mind besides the car pulling up and Helena getting out?

A Well, it was unusual for them to be painting the apartment at that time, but she acted like she was in a hurry to get inside. She kind of walked real fast getting inside.

Q How long had you lived next door to Helena at that point?

A About two or three months.

Q Did she wear any kind of special clothing that you were aware of?

[5754] A Yes; she wore a white hat all the time—you know—it was part of her, you know, character.

Q Let me show you a picture that has been marked D-87 and ask whether this looks familiar in any way?

A Yes.

Q You say "yes"? Does that look like the hat she was wearing?

A Similar.

Q You have to keep your voice up, please?
A Yes.

[5755] BY MR. SEGAL:

Q Did she wear anything else regularly as part of her clothing?
A She wore a purple-type shirt and she wore white boots a lot. I don't what type they are but she wore high-topped white boots, you know, kind of like they were real shiny, like patent leather-type things.
Q You have seen her in the last two days around court, haven't you?
A Yes.
Q Her hair is pitch black, I believe?
A Yes.
Q Did you ever see her when her hair was any other color?
A Yeah; her hair used to be longer and she used to be a lot skinnier than what she is now; and she used to have burgundy (sic) hair but she wore a blond wig a lot, you know. She had a wig she wore quite a bit.
Q And what length was that wig?
A Down to about right here.
Q A little above shoulder level?
A Right.
Q Did you learn about the murders that took place at Fort Bragg involving the MacDonald family; did you hear about that?
[5756] A Yes, the next day.
Q Did you have occasion to see or talk to Helena Stoeckley in connection with those murders at that time or any time shortly thereafter?
A A couple of days later I did.
Q Tell us about that, please?
A Well, Paul Bowman lived in the apartment right behind hers. You know, hers was like in the back of a big house and his was a separate little apartment; and

he had a telephone and I used to use his telephone, you know, to make long distance calls and stuff.

And at the first of the month I would, you know, pay him for the calls and stuff. Well, he had got out of the service and he was going back to Oklahoma City, and I owed him for some telephone calls, and he came up one afternoon.

And I saw him out there and I went out there to talk to him, you know, about paying him for the calls. Well, Paul was a friend of Helena's, and we were standing there talking, and he said that the police had questioned Helena about her whereabouts.

And I said, "Well, I saw her that morning," you know. I said, "I could be an alibi for her," because I had seen when she come in that morning, you know.

Q Was she around when you made that statement? [5757] A She walked—you know, she walked up and was talking with us, you know.

Q What if anything did she say or do when you made the statement that you had seen her come up that morning and you could be her alibi for her?

A Well, she kind of—you know, the word to use—backed off from me. You know, she kind of—you know, they had to leave then. They wanted to leave. They didn't talk no more.

Q Did you talk anymore at that time with Helena about the murders?

A No.

Q Were you aware of the time when the MacDonald funerals took place over at Fort Bragg?

A Well, I didn't know, you know, exactly what day, you know, that it happened; but my wife and I—we were going somewhere one day, and Helena was dressed in a solid black dress, you know, a long one.

And she had a black thing over her face.

Q You mean a veil?

A Yeah; and she went and got some wreaths like you see at a graveyard, and placed them along by her

door and stuff; and she was setting there like she was crying all day, you know.

Q Sitting where?

[5758] A By her door; by her front door. And that evening on the news it showed Dr. MacDonald in his uniform and it said that he had just come from the funeral thing; you know, they had had services that day.

Q Did you talk to Helena about why she was sitting there in black?

A No, she wouldn't talk to nobody. Her boyfriend come up in the afternoon, and was trying to get her to go off; and, you know, they got in a big argument because she wouldn't leave.

She just sat there real quiet like all day.

Q At some point thereafter, did you talk to her about whether she was involved in the murders at the MacDonald house?

A Yeah, I talked to her—well, she left shortly after that, and I didn't see her no more for a while; and then about two days before I testified I went to Haymont.

I had already talked to you and you wanted to know what her name was—her full name—and I didn't know what her full name was, so I went to Haymont to try to find out.

You know, I knew that people up there knew her and I could find out her name. Well, when I went up there she was there, you know. Haymont's a section [5759] of town that everybody hung out in; and I talked to her then, and, you know, I'd asked her where she had been and everything, and she said, "Just around."

And I asked—you know, we started talking about the murder and everything, and we got into that.

Q And what did she say about the MacDonald murders?

A Well, when you talked to her—it is like—one—I don't know how to say it—one minute she's with you—you know, like in a normal conversation; then the next

minute she's, you know, she was referring back to the murder.

You know, like she said that all she did, you know, was like hold the light; you know, that she didn't—she wouldn't kill anybody because she wasn't a hostile person, you know.

Q What about this light she was talking about?

A Holding the light would be the only thing she would do, you know. But she—you know, I said something to the reference that some policeman had seen them that morning, and she named the street, you know—Honeycutt—said that, you know, yes, she remembered, you know.

But it was like one minute she was there, you know, at the thing; then the next minute she was [5760] drifting back.

Q Back where you were?

(Witness nods affirmatively.)

Q Now, did she ever talk to you about seeing anything inside of any of the bedrooms in that house?

A She said that there was a kid's horse thing, but it wouldn't—it wouldn't roll. It would just stay still. It wouldn't roll, you know.

Q It was a hobby horse thing?

A Yeah, like, you know, like a little kid has, you know.

Q Yes; what did she say about that?

A It wouldn't move; you know, it wouldn't—

Q Rock?

A No. It wouldn't roll, you know; it was broke or something, it wouldn't move.

Q And when you talked to her about the house, did she say anything else that she remembered seeing there or any other thing that she remembered doing there?

A No.

Q Do you know whom that blue Mustang belonged to?

A No, I didn't know the guy's name, but, you know, I know what he looked like.

[5761] Q Who was that person—that is without his name? Was that somebody that Helena Stoeckley was connected with?

A Yeah, it was a friend of hers.

Q Had you seen that blue Mustang at the house before on other occasions?

A Yes, sir.

Q What is the last thing you ever said to Helena Stoeckley?

A The last occasion in Fayetteville?

Q That's right.

A I asked her what she did with her hat and boots and, you know, stuff; and she said she had got rid of them, you know.

But she kept—the whole conversation—two or three times during the conversation, she kept asking me—you know, I told her I had moved, you know; and she kept asking me what my new address was.

And I told her that, you know, the reason I had moved—that it was getting too rough in there; and she kept asking me over and over what my address was.

And when I was leaving the last thing she said to me was, "Tell your wife to lock the door," that "I'll be by to see you."

[5762] BY MR. SEGAL:

Q Was that said in jest or in seriousness as far as you could tell?

A To me, it was serious because it was like one minute, Helena was with you, and I don't know, it was like she was in another world the next minute, but I took it as serious; yeah. I didn't give her my real address.

Q You saw Helena yesterday when she was here in the Courthouse; did you not?

A Yeah.

Q Was that the first time since August of 1970, that you have seen her?

A Yeah.

Q Say "yes" or "no."

A Yes.

Q When you walked into the room—the conference room where we were sitting, what was the first thing that was said between you and Helena Stoeckley?

A You asked her if she knew me and she said, "Yes, that is Bill Posey. I told you to lock your doors and I would be by to see you." That is the last thing she said to me. Then, yesterday, after not seeing her all these years, that was the first thing she [5763] said to me.

Q Now, did anything happen back in August of 1970, to give you concern about not letting out your address?

A Well, my wife and I and her mother and husband, we went out to eat. Well, we had a cat and we had locked the cat inside the house, and I had a Doberman Pinscher. When we came back, my cat was outside, you know, wanting to go inside with us. I looked at Myer, which was my wife, and said, "We locked the cat inside. What is he doing outside," you know, and we stopped there and we went back out and on the side of my house, the first window going into the bedroom, you could see where somebody had opened it, you know, and went in that way.

We didn't go in the house. We went and got the police, you know, and they come up there and searched through it—searched through my house and everything.

Q Did Helena Stoeckley ever talk to you about being involved in witchcraft?

A Yeah.

Q Did she tell you that she was, herself, involved in witchcraft?

A She was a good witch.

[5764] Q That is what she said?

Q Was she ever involved in any rituals involving animals?

(Witness nods affirmatively.)

A Paul Bowman, to which I referred to a while ago, his wife—I can't remember her name now—but she was

more or less the head of them. She was a witch, you know. She said she was a witch. They had a bunch of books on witchcraft. Like one time, my wife's sister and her boyfriend had a big fight—dispute. They went out in the woods and dug up herbs and spices to make them a love potion—

Q (Interposing) I have got to ask you, Mr. Posey, did it work?

A They were married.

Q One last question, Mr. Posey, did Helena Stoeckley ever conduct any ritual involving a cat?

A Yeah. They had a thing one time where they had like a seance-type thing and they crucified—well, I don't know—they killed a cat for part of their ritual thing or whatever it was.

MR. SEGAL: Cross-examine.

CROSS-EXAMINATION 3:16 p.m.

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BY MR. BLACKBURN:

[5765] Q Mr. Posey, I believe you testified at the Article 32; did you not?

A Yes, sir; the Government thing.

Q The military proceedings?

A Yes, sir.

Q When that was taking place in 1970, you were working at the Heart of Fayetteville Motor Inn; is that correct?

A No, sir.

Q Where were you working?

A When the crime happened?

Q No, when the Article 32, the military proceeding?

A I was working for Fayetteville Linen. It is a linen company.

Q You had occasion to go to the Heart of Fayetteville Motor Inn; is that right?

A Yes; we delivered linen.

Q You saw Mr. Segal and Mr. Eismann at that time there?

A No. I called, you know, they had a hotline in Fayetteville where you call and you ask them about if you have got a problem or something and it comes out in the paper and they answered it. Well, I had called the hotline, you know, and told them what I [5766] knew, and if I should, you know, go forth with my information. So one day, we were there and the man that was showing the route and everything had mentioned that Mr. Eismann and Mr. Segal were staying there. I just decided to go forth and tell them what I knew.

Q And you did that?

A Yes, sir.

Q You never told the law enforcement agency, though, did you?

A No, sir. After I talked to Mr. Segal, there was a military man that came to my job one day and talked to me.

Q He did?

A Yes, sir; kind of a tall guy.

Q Do you recall that person's name?

A He was at the military hearing.

Q Could it have been Lieutenant Malley?

A He was a tall man. I can't remember if that was his name, though. He was on the, you know, prosecuting side.

Q Captain Malley?

A That might have been.

Q Did you ever recall being told by anyone prior to your testimony at the Article 32 that there was a reward being offered by anyone for testimony relating [5767] to this?

A They had mentioned it; yes.

Q Who mentioned it?

A Well, I had read about it in the paper and then—if it was Mr. Eismann or not that mentioned it—but the day that I talked to Mr. Segal, I told him that I was

not interested in the reward money—that I was not there for that.

Q Now, the night that it happened or that you say that you went to the window—

A (Interposing) I went to my front door.

Q Do you recall whether or not she was wearing the hat?

A No. She didn't have the hat on. She had something in her hand.

Q You didn't see her hat?

MR. SEGAL: Let him finish. I OBJECT, Your Honor.

MR. BLACKBURN: I thought he was through. Finish your answer by all means.

THE WITNESS: She was in a hurry to get to the door. No, I did not see her with a hat on that morning, but I know she had a purple vest and stuff on.

BY MR. BLACKBURN:

Q Did she have a sheet on or anything like that?

A I didn't see her with a sheet; no.

Q Isn't it true that Helena has told you during that time that she was on drugs and did not know where she had been at that time?

A Yeah. She said she was tripping that night; yes, sir.

Q She didn't know where she had been?

A No. She said that she didn't know where she had been.

Q That was one of the reasons you suggested that you could perhaps give her an alibi because you had seen her?

A I had seen her that morning; yes.

Q Now, isn't it true that with respect to "pigs"—the term "pigs" that Helena had always told you that she called the police "pigs"?

A Yeah. Well, in the section, you know, like when people back then referred to "pigs," it didn't necessarily

mean policemen, but it meant people in society—the Establishment—however you refer to it.

Q Has Helena ever told you that she was in the MacDonald apartment?

A She never point-blank said that she was in the apartment, but she did say like one minute like I was explaining a while ago, one minute, she would be in a [5769] normal conversation and then the next minute she would be like she was right there. But like she told me about trying to ride the toy and like she said about holding the light and things like that.

Q She told you that she held the light?

A She said, you know, that she would hold the light, but she wouldn't kill nobody because she wasn't a hostile—

Q (Interposing) I am sorry—are you through?

A Yes, sir.

Q Isn't is true that she said that that would have been what she would have done if she had been there because she couldn't kill anybody?

A I don't know how to answer that. She never said it like you have just said it—I mean like she said—she never said, "If I had been there, that is what I would have done." She didn't say it like that.

Q Tell us what she did say.

A She would say that like—

Q (Interposing) Let me make it easier for you. Did she ever suggest to you that she could have been holding the light?

A Yes.

Q Is that a fair statement?

A That is the way.

[5770] Q Isn't it true that she said to you that she could not have killed anyone?

A Yeah. She would emphasize that she did not have hostile tendencies.

Q Did she seem concerned to you that she did not know where she had been during that time period?

A You know, what I never understood was that like when she talked to me, she would be concerned that she

didn't know where she was; but then like the day that they had the funeral service and everything, she mourned all day, you know—I couldn't understand.

Q You said she wore black, I believe?

A She wore a long black dress and a thing over her face. She had them flowers.

Q Do you recall reading anything in the newspaper about a child's hobby horse in connection with this crime?

A No. She mentioned that to me the night out by Haymont. I had never read that.

Q Now, the time when you went to the door, did you happen to look at the clock to see what time it was?

A Yeah. I got up to go to the bathroom, you know, I have a—I don't know if it is a habit or what, but for the longest I can remember, around 4:00, [5771] 4:30, or 5:00 o'clock, I get up and go to the bathroom. I mean, I do it all the time, you know. See, let me explain something. The reason that I went to the door to look out—we were having trouble with people blocking our driveways and stuff like this. Like a couple of mornings I got up to go to work and there would be people staying over there and they would have our driveway blocked and they would have, you know—they partied all the time and it was just, you know, you couldn't get any rest.

Q How long after you testified at the Article 32 did you remain in the Fayetteville area?

A Only a couple of days.

Q You left rather quickly?

A Yeah.

Q Do you recall being given $150 by Lieutenant Malley when you left?

A It was between $100 and $150; yes.

Q Did you know that he was a friend of Dr. MacDonald's; is that correct?

A No. All I knew was that he was with the military. That is all. That was for moving expenses, you know, that is all.

[5772] BY MR. BLACKBURN:

Q Do you recall ever talking to Mr. Brisentine?

A Who is he?

Q Prior to yesterday?

A I don't know who you are talking about.

Q He's the tall fellow—the tall thin fellow with sort of silvery hair. He has been here this afternoon. Do you recall seeing him prior?

A One man that I have seen before, yeah, years ago.

Q Do you recall ever telling Mr. Brisentine in the past that perhaps you were mistaken as to the night that you saw Helena?

A No.

MR. BLACKBURN: No further questions.

MR. SMITH: Any questions for the court?

MR. SEGAL: Just on your redirect very briefly to clarify a matter, Your Honor. May I?

REDIRECT EXAMINATION

BY MR. SEGAL:

Q Mr. Posey, you said that very shortly after you testified at the military proceeding that you left Fayetteville, is that right?

[5773] A They broke into my house, you know; somebody broke into my house; and when the police came, in my bedroom, there was a knife behind the door.

It was—oh, never mind.

Q Were you scared?

A Yeah, I was scared.

Q Where did you move to after you left?

A My home, Alabama.

Q Did you feel that the episode at your home was in any way related to the fact you had testified at the military proceedings?

A Well, that night when John and all of us went to the police there was a dirt alley about a block and a half from our house.

Jim, one of the guys that used to come over to Helena's, was in his yellow Plymouth sitting right there. We went down to the police station. He was right behind us following us down there, you know.

So I felt like I wasn't safe there, no.

Q What did you use the $150.00 for?

A To get a moving truck, you know; rent one of them U-Haul trucks to move with.

Q You moved down to Alabama?

A Yes.

Q Do you live there now?

[5774] A Yes, sir.

MR. SEGAL: Thank you very much.

THE WITNESS: I had a good job going and everything too.

MR. SEGAL: You left a good job in Fayetteville?

(Witness nods affirmatively.)

MR. SEGAL: Thank you, Mr. Posey.

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

Crim. No. 75-26-CR-3

UNITED STATES OF AMERICA, PLAINTIFF

*vs.*

JEFFREY R. MACDONALD, DEFENDANT

## MOTION TO VACATE JUDGMENT OF CONVICTION AND DISMISS INDICTMENT

Defendant, JEFFREY R. MacDONALD, moves this Court, pursuant to 28 U.S.C. § 2855 and Rule 48(b) of the Federal Rules of Criminal Procedure, to vacate its judgment of conviction against him, dated August 29, 1979, and to dismiss the three-count indictment for murder against him. This Motion is based upon the government's violation of defendant's right to a speedy trial as guaranteed by the Sixth Amendment to the United States Constitution.

This the 4th day of September, 1979.

/s/ Bernard L. Segal
BERNARD L. SEGAL, Esquire
Suite 300 BB&T Building
Raleigh, North Carolina 27602
Attorney for Defendant
Jeffrey R. MacDonald

and with him

/s/ Wade M. Smith
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SUPREME COURT OF THE UNITED STATES

No. 80-1582

UNITED STATES, PETITIONER

*v.*

JEFFREY R. MACDONALD

ORDER ALLOWING CERTIORARI

Filed May 26, 1981

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1981 350047 525